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16 GARY FUNG and ISOHUNT WEB TECHNOLOGIES, INC.

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19  
20 COLUMBIA PICTURES INDUSTRIES,  
21 INC., et al.,

22 Plaintiffs,

23 v.

24 GARY FUNG, et al.,

25 Defendants.  
26  
27  
28

Case No. CV 06-5578-SVW (JCx)

**DECLARATION OF JARED R.  
SMITH IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTIONS FOR  
SUMMARY JUDGMENT**

1 I, Jared R. Smith, declare:

2 1. I am an attorney of law admitted to practice before this Court and make  
3 this declaration in support of Defendants' Oppositions to Plaintiffs' Motion for  
4 Summary Judgment on Willful and Innocent Infringement and Plaintiffs' Motion for  
5 Summary Judgment on Defendants Affirmative Defenses of Fair Use and Failure to  
6 Mitigate. All statements made herein are on personal knowledge unless otherwise  
7 stated. If called as a witness, I could competently testify as to the matters stated  
8 herein.

9 2. During the first phase of this case, Defendants propounded requests for  
10 production of documents seeking information concerning all the works Plaintiffs  
11 claimed in this action. Attached hereto as **Exhibit A** is a true and correct copy of  
12 Defendants' Request for Production of Documents, Set 2 (Requests nos. 83-94),  
13 which Defendants served on May 18, 2007.

14 3. On June 18, 2007, Plaintiffs objected to each of Defendants' Requests  
15 nos. 83-89 and 91-94 on the basis that "[p]roof of ownership and direct infringement  
16 of the thousands of works infringed by defendants therefore will not be at issue until  
17 after a finding of liability, and thus individualized discovery to challenge ownership of  
18 each work is inappropriate at this stage." Attached hereto as **Exhibit B** is a true and  
19 correct copy of Plaintiffs' Responses to Defendants' Request for Production of  
20 Documents, Set 2.

21 4. In responding to Defendants' Second Set of Requests for Production of  
22 Documents, Plaintiffs refused to produce documents concerning any of their works  
23 other than the forty-four listed in Exhibit A to the First Amended Complaint.

24 5. During the first phase of this case, Defendants also propounded  
25 interrogatories seeking information concerning the works Plaintiffs claimed were  
26 illegally copied. Attached hereto as **Exhibit C** is a true and correct copy of  
27 Defendants' Interrogatories, Set 1 (Interrogatories nos. 1-9), which Defendants served  
28 on May 18, 2007.

6. On June 18, 2007, Plaintiffs objected to each of Defendants' Interrogatories nos. 1, 4-6, and 9, on the basis that discovery at that time was "limited to ... the representative list of copyrighted works annexed as Exhibit A to the First Amended Complaint." Attached hereto as **Exhibit D** is a true and correct copy of Plaintiffs' Responses to Defendants' Interrogatories set one. Those Interrogatories sought information about the works Plaintiffs claimed had been infringed (Interrogatory No. 1); the amount of monetary or statutory damages Plaintiffs alleged, and the basis for their computation (Interrogatory No. 4); identification of dot-torrent files and eDonkey hash links implicated in any alleged infringements (Interrogatories Nos. 5 and 6); and facts supporting any claim that Defendants had knowledge of infringements (Interrogatory No. 9).

7. The only information Plaintiffs agreed to provide in response to Defendants' Interrogatories during the first phase of this litigation was "copies of documents relating to the copyright ownership of the representative list of works in the First Amended Complaint." Plaintiffs refused to provide information concerning any of their works other than the forty-four listed in Exhibit A to the First Amended Complaint.

8. Attached hereto as **Exhibit E** is a true and correct copy of the transcript from the July 1, 2013 scheduling conference in this action.

9. Attached hereto as **Exhibit F** is a true and correct copy of Plaintiffs' *Ex Parte* Application For Protective Order Re Rule 30(b)(6) Depositions, dated August 1, 2007.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing statements are true and correct.

Executed in Londonderry, New Hampshire on September 6, 2013.

/s/ Jared R. Smith  
Jared R. Smith

## **EXHIBIT A**

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3 Hamilton Landing, Suite 280  
Novato, CA 94949  
Telephone: (415) 924-4250  
Facsimile: (415) 924-2905

Attorney for Defendants  
Gary Fung and Isohunt Web Technologies, Inc.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

COLUMBIA PICTURES, et. al.,  
Plaintiffs,

vs.

GARY FUNG, et. al.,  
Defendants.

Case No. CV06-5578-SVW (JCx)

REQUEST FOR PRODUCTION  
DOCUMENTS, SET 2

FRCP 34

PROPOUNDING PARTY: Defendant GARY FUNG.

RESPONDING PARTY: Plaintiffs Columbia Pictures Industries Inc, Disney Enterprises Inc, Paramount Pictures Corporation, TriStar Pictures Inc, Twentieth Century Fox Film Corporation, Universal City Studios LLLP, Universal City Studios Productions LLLP, Warner Bros Entertainment Inc

SET NUMBER: TWO

Propounding party requests that responding party, pursuant to Federal Rule of Civil Procedure 34, permit the inspection and copying of the documents listed below and retain during the pendency of this action the tangible materials so listed.

**REQUESTS FOR PRODUCTION OF DOCUMENTS, SET TWO**

Columbia Pictures, *et al.* v. Fung, et al.  
U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)

1 The production of documents shall be made at the Rothken Law Firm LLP, 3  
2 Hamilton Landing, Suite 280, Novato, CA 94949, within thirty (30) days of service.

3 **DEFINITIONS**

4 1. The terms “you” “your,” AND “RESPONDENT” refer to the respective  
5 plaintiff responding to these requests and where applicable in this context, plaintiff’s  
6 corporate affiliates, predecessors, predecessors of corporate affiliates, representatives,  
7 agents, servants, counsel, employees, consultants, and persons authorized to act,  
8 acting, or purporting to act on its behalf.

9 2. The term “defendants” refer to the defendants herein, both collectively  
10 and each of them, individually.

11 3. The term “MPAA” refers to the Motion Picture Association of America.

12 4. The term “Defendant’s Websites” means the websites, web pages, search  
13 engines, trackers, and services, alleged to be under the control or supervision of  
14 propounding party or Isohunt Web Technologies, Inc. including, but not limited to,  
15 isohunt.com, ed2k-it.com, BTHub, and torrentbox.com, including all content,  
16 databases, files, web pages, and software that comprise the site and support, enable,  
17 and provide its full range of features and functions, including to users and  
18 administrators, and all server hardware on which said content, databases, files, web  
19 pages, and software reside.

20 5. The present tense shall be construed to include the past tense and the past  
21 tense shall be construed to include the present tense as required by the context to elicit  
22 all information discoverable within the broadest scope of these document requests.

23 6. The singular shall be construed to include the plural and the plural shall  
24 be construed to include the singular as required by the context to elicit all information  
25 discoverable within the broadest scope of these document requests.

26 7. "And" and "or" have both conjunctive and disjunctive meanings as  
27 required by the context to elicit all information discoverable within the broadest scope  
28 of these document request.

**REQUESTS FOR PRODUCTION OF DOCUMENTS, SET TWO**

Columbia Pictures, *et al.* v. Fung, *et al.*

U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)

1           8.     "Any" and "all" shall mean "each and every."

2           9.     "Communication(s)" means the transmittal of information by any means  
3 and includes communication of any kind, whether written, oral, electronic or other.

4           10.    The terms "concerning" and "related to" mean, without limitation,  
5 referring to, describing, evidencing, constituting, summarizing, analyzing, studying,  
6 discussing, relating to, and resulting from, and should be construed broadly as  
7 required by the context to elicit all information discoverable within the broadest scope  
8 of these document requests.

9           11.    "Documents" includes every writing, recording, or record in any form,  
10 whether handwritten, printed, typed, taped, or in any other graphic, digital, magnetic,  
11 optical, or mechanical form, however produced, reproduced, or recorded, and should  
12 be construed to be synonymous in meaning and scope to the usage of this term in  
13 Federal Rule of Civil Procedure 34(a). The term includes, without limitation, all  
14 memoranda, reports, data, correspondence, phone messages, diaries, logs, notes, bills,  
15 invoices, checks, receipts, and e-mail messages, including those within the personal or  
16 private possession, custody, or control of RESPONDENT, including any  
17 RESPONDENT'S officer, director, employee, agent, or individual, as specified in the  
18 definition of "RESPONDENT" above. The term also includes, without limitation, any  
19 data compilations from which information can be obtained, and if necessary,  
20 translated into usable form through the use of any machine, device, or equipment,  
21 whether or not sent, received, or otherwise transmitted. The term also includes, with  
22 limitation, every draft of a document, and any copy that is not identical in each and  
23 every respect to the original or another copy.

24           12.    The term "including" shall be construed to mean "including without  
25 limitation."

26           13.    To the extent documents are maintained in electronic formats, this  
27 request calls for production in electronic format. Documents maintained in electronic  
28 formats should be produced in their native formats as they currently exist on your

**REQUESTS FOR PRODUCTION OF DOCUMENTS, SET TWO**

Columbia Pictures, *et al.* v. Fung, *et al.*

U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)

1 storage media and devices.

2 14. Source code should be produced in regular tool readable format and  
3 include all ancillary files - such as project files, makefiles, header files, and third party  
4 library code (whether in source or compiled form) - necessary to build working  
5 versions of the full applications.

6 15. If any of the documents requested herein has been lost or destroyed: (a)  
7 provide a written statement, in lieu of each such lost or destroyed document, that  
8 describes in detail the nature of the document and its contents, identifies the author  
9 and recipient(s) of the document, specifies the date on which the document was  
10 prepared or transmitted or both, and if possible specifies the date on which the  
11 document was lost or destroyed, the reasons for loss or destruction, and the  
12 individuals with knowledge of such loss or destruction; and (b) provide any  
13 documents existing at the time of such loss or destruction setting forth or reflecting  
14 any policy or procedure then in effect for destruction or retention of documents.

15 16. Documents sought in this request include documents currently or  
16 previously within the knowledge, possession, or control of Defendants, as well as  
17 those documents which come into the possession of Defendants subsequent to service  
18 hereof. Each of the following document requests is continuing in nature and Plaintiffs  
19 hereby request that if you obtain any additional responsive documents at any later  
20 date, you promptly so inform Plaintiffs and produce those documents.

21 17. If any document is not produced on the basis of a claim of privilege or  
22 for any other reason, identify the document with particularity, including without  
23 limitation the author(s), any recipient(s), any other individual or entity to whom the  
24 document has been shown or transmitted, any other individual or entity with whom  
25 the document has been discussed, the number of pages, attachments, and appendices,  
26 the date of the document, a description of the subject matter sufficient to form the  
27 basis of a claimed privilege and to uniquely identify the document, and a short  
28 statement of the nature of the claimed privilege or reason for withholding production.

**REQUESTS FOR PRODUCTION OF DOCUMENTS, SET TWO**

Columbia Pictures, *et al.* v. Fung, *et al.*

U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)



1 For each individual or entity identified in conjunction with a claim of privilege,  
2 provide information relating to the relationship between Defendant(s) and the  
3 individual and entity.

4 18. If a document is in the possession of a person or entity other than one  
5 over whom you have no control, (a) set forth whether and when the document was in  
6 your possession or otherwise how you became aware of the document; (b) set forth the  
7 reason(s) why the document is no longer in your possession; and (c) identify the  
8 individual or entity which is presently in possession of the document.

9 19. You are required to provide separate responses to all of the following  
10 document requests.

11 20. When any request calls for the production of any portion of any  
12 document, the entire document containing any such portion must be produced.

13 21. Unless otherwise specified, this document request seeks documents  
14 prepared, generated, duplicated, communicated, distributed or transmitted on or after  
15 January 1, 2000.

#### 16 DOCUMENT REQUESTS

17 83. Produce all documents concerning, evidencing or otherwise relating to  
18 actions or omissions taken by you to follow statutory procedures for registration of the  
19 copyrights of any of the alleged copyrighted material that is the subject of your  
20 complaint.

21 84. Produce all documents concerning, evidencing or otherwise relating to  
22 any written agreements between plaintiffs and any other party to acquire the subject  
23 copyrights.

24 85. Produce all documents concerning, evidencing or otherwise relating to  
25 any disclosure of previous registrations of some or all of the subject works.

26 86. Produce all documents concerning, evidencing or otherwise relating to  
27 actions or omissions taken by you to follow statutory procedures for registration of the  
28

#### REQUESTS FOR PRODUCTION OF DOCUMENTS, SET TWO

Columbia Pictures, *et al.* v. Fung, *et al.*

U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)

1 copyrights of any of the alleged copyrighted material that is the subject of your  
2 complaint.

3 87. Produce all documents concerning, evidencing or otherwise relating to  
4 any actions or omissions taken by you to disclaim pre-existing material in the subject  
5 works.

6 88. Produce all documents concerning, evidencing or otherwise relating to  
7 the authority and knowledge of the signatory to the copyright registrations of the  
8 subject works to perform such acts.

9 89. Produce all documents concerning, evidencing or otherwise relating to all  
10 editions of the subject works that were available to submit to the U.S. Copyright  
11 Office including, without limitation, the actual edition submitted.

12 90. Produce all documents concerning, evidencing or otherwise relating to  
13 any actions or omissions taken by you to comply with the copyright notification  
14 requirements of the Digital Millennium Copyright Act, 17 U.S.C. § 512.

15 91. Produce all documents concerning, evidencing or otherwise relating to  
16 any actions or omissions taken by you to grant any license to any party to use the  
17 subject works.

18 92. Produce all documents concerning, evidencing or otherwise relating to  
19 any actions or omissions taken by you that provide any evidence that you have  
20 standing to bring this action.

21 93. Produce all documents concerning, evidencing or otherwise relating to  
22 any damages you have suffered as a result of any of the allegations asserted in your  
23 complaint.

24 ///

25 ///

26 ///

27  
28 **REQUESTS FOR PRODUCTION OF DOCUMENTS, SET TWO**


Columbia Pictures, *et al.* v. Fung, *et al.*

U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)

1           94. Produce all documents concerning, evidencing or otherwise relating to  
2 any evidence to establish the validity of the copyright registrations upon which you  
3 rely in bringing this action.

4  
5 Dated: May 18, 2007

ROTHKEN LAW FIRM LLP

6  
7  
8   
9 By: Ira P. Rothken, Esq., (State Bar #160029)  
Attorney for Defendants

10  
11 Ira P. Rothken (SBN #160029)  
12 ROTHKEN LAW FIRM LLP  
13 3 Hamilton Landing, Suite 280  
14 Novato, CA 94949  
15 Telephone: (415) 924-4250  
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PROOF OF SERVICE

I am over the age of 18 years, employed in the county of Marin, and not a party to the within action; my business address is 3 Hamilton Landing, Suite 280, Novato, CA 94949.

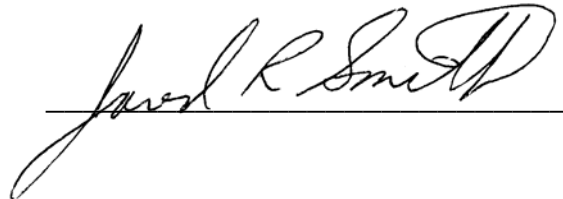
On May 18, 2007, I served the within:

**REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO**

By EMAIL and FEDEX by depositing a copy in an envelope, postage prepaid in a FEDEX BOX addressed as follows:

<b>VIA EMAIL AND FEDEX</b> <b>Karen B. Thorland</b> <b>Walter A Edmiston</b> Loeb and Loeb 10100 Santa Monica Blvd, Ste 2200 Los Angeles, CA 90067-4164 310-282-2000 Email: kthorland@loeb.com	<b>VIA EMAIL AND FEDEX</b> <b>Steven B Fabrizio</b> <b>Katherine A Fallow</b> <b>Duane Charles Pozza</b> Jenner and Block 601 Thirteenth Street NW, Suite 1200 South Washington, DC 20005 202-639-6000 Email: sfabrizio@jenner.com Email: kfallow@jenner.com Email: dpozza@jenner.com
<b>VIA FEDEX</b> <b>Gregory Paul Goeckner</b> <b>Lauren T Nguyen</b> Motion Picture Association of America 15503 Ventura Blvd Encino, CA 91436 818-995-6600	<b>VIA EMAIL AND FEDEX</b> Gianni P Servodidio Sami J Valkonen Ronald M Daignault Jenner and Block 919 Third Avenue, 37th Floor New York, NY 10022 212-891-1600 Email: gservodidio@jenner.com Email: svalkonen@jenner.com Email: rdaignault@jenner.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 18, 2007.



**REQUESTS FOR PRODUCTION OF DOCUMENTS, SET TWO**

Columbia Pictures, *et al.* v. Fung, *et al.*  
U.S. Dist. Ct., Central Dist Cal., No. CV **06-5578 SVW (JCx)**

## **EXHIBIT B**

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*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

COLUMBIA PICTURES  
INDUSTRIES, INC., *et. al.*

Plaintiffs,

v.

GARY FUNG, *et. al.*

Defendants.

Case No. CV-06-05578 SVW (JCx)

**PLAINTIFFS' RESPONSES TO  
DEFENDANTS' REQUEST FOR  
PRODUCTION OF DOCUMENTS,  
SET 2**

**[Fed. R. Civ. P. 34]**

Pursuant to Federal Rule of Civil Procedure 34, plaintiffs Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Paramount Pictures Corporation, TriStar Pictures, Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, Universal City Studios Productions LLLP, and Warner Bros. Entertainment Inc. (“plaintiffs”) hereby respond to defendants’ Request for Production of Documents, Set 2 (the “Second Requests”):

**SPECIFIC OBJECTIONS TO DEFINITIONS**

1. Plaintiffs object to the definitions of “you,” “your,” “responding party,” and “RESPONDENT” as overbroad, not reasonably calculated to lead to the discovery of admissible evidence, and unduly burdensome. For the purposes of this Second Request, plaintiffs will produce documents, to the extent applicable, in the possession of each plaintiff in suit and/or, as appropriate, in the possession of related persons or entities that reasonably may possess responsive information.

2. Plaintiffs object to the Second Requests to the extent that they are not limited to time periods reasonably related to the matters at issue in this litigation. Specifically, plaintiffs object to the Second Requests to the extent that they seek the production by the plaintiffs of documents or materials prepared, generated, duplicated, communicated, distributed or transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and seeking information neither relevant to this action nor likely to lead to the discovery of admissible evidence, or after the commencement of litigation, as overbroad and unduly burdensome. Plaintiffs will produce all non-privileged responsive documents created on or after January 1, 2002, through the commencement of this litigation.

3. Plaintiffs object to the Second Requests to the extent that they call for every identical copy of each document, on the grounds that the request is overly broad and unduly burdensome.

4. Plaintiffs object to the terms “any” and “all” with respect to certain of the document requests. Plaintiffs undertake to provide such information as they are able to locate after reasonable and diligent investigation. By answering, plaintiffs do not certify that “any” or “all” items of responsive information have been obtained and reserve the right to supplement their answers as more information becomes available.

Plaintiffs incorporate these Specific Objections to Definitions into each specific response as if fully set forth in each response.

## GENERAL OBJECTIONS

1. Plaintiffs object to the Second Requests on the grounds that they are harassing, oppressive, overbroad, and unduly burdensome. Plaintiffs further object to the Second Requests because the burdens imposed by responding to the Second Requests far outweigh any potential value of responding to the Second Requests.

2. Plaintiffs object to the Second Requests to the extent that they call for the disclosure of information subject to the attorney-client privilege, the joint defense or common interest privilege, the work product doctrine or any other applicable privilege or doctrine. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the joint defense or common interest privilege, the attorney work product immunity doctrine, or any other applicable privilege or doctrine.

3. Plaintiffs object to the Second Requests to the extent that they call for the disclosure of communications with, facts known by, or opinions held by non-testifying experts retained pursuant or specially employed in anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P. 26(b)(4)(B). Any inadvertent disclosure of such information shall not be deemed a waiver of the protection against the Second Requests afforded by Rule 26(b)(4)(B) or any other applicable privilege or doctrine.



1           4.     Plaintiffs object to the Second Requests to the extent that they call for the  
2 disclosure of information beyond that required by the Federal Rules of Civil  
3 Procedure or the Local Rules of the Court.

4           5.     Plaintiffs object to the Second Requests to the extent that they call for  
5 documents created or maintained by defendants, for documents already in defendants'  
6 possession, or for information readily accessible to defendants in the public record, on  
7 the grounds that it is unduly burdensome, oppressive, and harassing, and would  
8 needlessly increase the cost of litigation.

9           6.     Plaintiffs object to the Second Requests to the extent they seek  
10 unavailable information or information not currently in plaintiffs' possession, custody  
11 or control.

12           7.     Plaintiffs object to the Second Requests to the extent that they seek  
13 information constituting trade secrets or other financial, technical, research,  
14 development, strategic, or commercial information.

15           8.     Plaintiffs object to the Second Requests to the extent that they seek  
16 discovery concerning the total number of infringing works claimed by the plaintiffs in  
17 this case and/or damages. In the case management conference held on November 6,  
18 2006, the Court directed that proceedings on remedial issues such as these will be  
19 deferred until after summary judgment proceedings on the core issue of defendants'  
20 secondary liability.

21           9.     Plaintiffs object to the Second Requests to the extent that they seek  
22 discovery concerning Affirmative Defenses numbered 5, 10-15, 17, 23-27, 30-36, 38  
23 and 39 in Defendants' Answer to Plaintiffs' First Amended Complaint ("Answer")  
24 which are frivolous and lacking in evidentiary support or contrary to the law. On June  
25 13, 2007, Plaintiffs served Defendants with a Motion For Sanctions Under Rule 11  
26 Fed.R.Civ.P. for Filing of Frivolous Affirmative Defenses ("Rule 11 Motion") asking  
27  
28

1 the Court to strike Affirmative Defenses numbered 5, 10-15, 17, 23-27, 30-36, 38 and  
2 39 from defendants' Answer.

3 10. Plaintiffs object to the Second Requests to the extent that they are not  
4 consecutively numbered, in violation of the Local Rules of the Central District of  
5 California.

6 11. By agreeing to search for or produce documents responsive to any  
7 particular request, plaintiffs do not represent that such documents exist.

8 Plaintiffs incorporate these General Objections into each specific response as if  
9 fully set forth in each response.  
10

### 11 **RESPONSES**

12 83. Produce all documents concerning, evidencing or otherwise relating to actions  
13 or omissions taken by you to follow statutory procedures for registration of the  
14 copyrights of any of the alleged copyrighted material that is the subject of your  
15 complaint.  
16

17 RESPONSE: Plaintiffs incorporate each General Objection and Specific  
18 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
19 Request as overbroad and unduly burdensome to the extent that it seeks discovery  
20 relating to the total number of infringing works claimed by the plaintiffs in this case  
21 and/or damages. In the case management conference held on November 6, 2006, the  
22 Court directed that the parties' initial discovery should be limited to the core liability  
23 issues as reflected by the representative list of copyrighted works annexed as Exhibit  
24 A to the First Amended Complaint. Proof of ownership and direct infringement of the  
25 thousands of works infringed by defendants therefore will not be at issue until after a  
26 finding of liability, and thus individualized discovery to challenge ownership of each  
27  
28

1 work is inappropriate at this stage. Plaintiffs decline to produce documents on the  
2 basis of the foregoing general and specific objections.

3 Plaintiffs specifically object to this Request as overbroad and unduly  
4 burdensome to the extent that it seeks discovery concerning Affirmative Defense No.  
5 30 in defendants' Answer. On June 13, 2007, plaintiffs served defendants with the  
6 Rule 11 Motion, which, among others, seeks to strike Affirmative Defense No. 30,  
7 from defendants' Answer as frivolous, and either having no evidentiary support or as  
8 not warranted by law, or both. Plaintiffs decline to produce documents on the basis of  
9 the foregoing objection.

10 Plaintiffs further object to this Request as overbroad, unduly burdensome,  
11 harassing, and seeking information not relevant to the claims and defenses at issue in  
12 this case. Plaintiffs further object to this Request as vague and ambiguous in that it  
13 seeks documents about unspecified "omissions." Plaintiffs decline to produce  
14 documents on the basis of the foregoing objections.

15 Plaintiffs further specifically object to this Request to the extent that it calls for  
16 materials protected by the attorney-client privilege, the joint defense or common  
17 interest privilege, the work product doctrine or any other applicable privilege or  
18 doctrine, or that it seeks the disclosure of communications with, facts known by, or  
19 opinions held by non-testifying experts retained pursuant or specially employed in  
20 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
21 26(b)(4)(B), and plaintiffs decline to produce such documents.

22 Plaintiffs further object to this Request to the extent that it is not limited to time  
23 periods reasonably related to the matters at issue in this litigation. Specifically,  
24 plaintiffs object to this Request to the extent that it seeks the production of documents  
25 or materials prepared, generated, duplicated, communicated, distributed or transmitted  
26 either prior to January 1, 2002, as overbroad, unduly burdensome, and seeking  
27  
28

1 information neither relevant to this action nor likely to lead to the discovery of  
2 admissible evidence, or after the commencement of litigation, as overbroad and  
3 unduly burdensome. Plaintiffs decline to produce documents created before January  
4 1, 2002, or after the commencement of this litigation.

5 Without waiver of and subject to and incorporating the general and specific  
6 objections and express limitations on production as set forth above, plaintiffs will  
7 produce copies of responsive documents relating to the copyright ownership of the  
8 illustrative set of infringing works attached as Exhibit A to the First Amended  
9 Complaint.  
10

11  
12 84. Produce all documents concerning, evidencing or otherwise relating to any  
13 written agreements between plaintiffs and any other party to acquire the subject  
14 copyrights.

15 RESPONSE: Plaintiffs incorporate each General Objection and Specific  
16 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
17 Request as overbroad and unduly burdensome to the extent that it seeks discovery  
18 relating to the total number of infringing works claimed by the plaintiffs in this case  
19 and/or damages. In the case management conference held on November 6, 2006, the  
20 Court directed that the parties' initial discovery should be limited to the core liability  
21 issues as reflected by the representative list of copyrighted works annexed as Exhibit  
22 A to the First Amended Complaint. Proof of ownership and direct infringement of the  
23 thousands of works infringed by defendants therefore will not be at issue until after a  
24 finding of liability, and thus individualized discovery to challenge ownership of each  
25 work is inappropriate at this stage. Plaintiffs decline to produce documents on the  
26 basis of the foregoing general and specific objections.  
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1 Plaintiffs specifically object to this Request as overbroad and unduly  
2 burdensome to the extent that it seeks discovery concerning Affirmative Defense No.  
3 31 in defendants' Answer. On June 13, 2007, plaintiffs served defendants with the  
4 Rule 11 Motion, which, among others, seeks to strike Affirmative Defense No. 31,  
5 from defendants' Answer as frivolous, and either having no evidentiary support or as  
6 not warranted by law, or both. Plaintiffs decline to produce documents on the basis of  
7 the foregoing objection.

8 Plaintiffs further object to this Request as overbroad, unduly burdensome,  
9 harassing, and seeking information not relevant to the claims and defenses at issue in  
10 this case. Plaintiffs decline to produce documents on the basis of the foregoing  
11 objections.

12 Plaintiffs further specifically object to this Request to the extent that it calls for  
13 materials protected by the attorney-client privilege, the joint defense or common  
14 interest privilege, the work product doctrine or any other applicable privilege or  
15 doctrine, or that it seeks the disclosure of communications with, facts known by, or  
16 opinions held by non-testifying experts retained pursuant or specially employed in  
17 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
18 26(b)(4)(B), and plaintiffs decline to produce such documents.

19 Plaintiffs further object to this Request to the extent that it is not limited to time  
20 periods reasonably related to the matters at issue in this litigation. Specifically,  
21 plaintiffs object to this Request to the extent that it seeks the production by plaintiffs  
22 of documents or materials prepared, generated, duplicated, communicated, distributed  
23 or transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and  
24 seeking information neither relevant to this action nor likely to lead to the discovery of  
25 admissible evidence, or after the commencement of litigation, as overbroad and  
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1 unduly burdensome. Plaintiffs decline to produce documents created before January  
2 1, 2002, or after the commencement of this litigation.

3 Without waiver of and subject to and incorporating the general and specific  
4 objections and express limitations on production as set forth above, plaintiffs will  
5 produce copies of responsive documents relating to the copyright ownership of the  
6 illustrative set of infringing works attached as Exhibit A to the First Amended  
7 Complaint.  
8

9  
10 85. Produce all documents concerning, evidencing or otherwise relating to any  
11 disclosure of previous registrations of some or all of the subject works.

12 RESPONSE: Plaintiffs incorporate each General Objection and Specific  
13 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
14 Request as overbroad and unduly burdensome to the extent that it seeks discovery  
15 relating to the total number of infringing works claimed by the plaintiffs in this case  
16 and/or damages. In the case management conference held on November 6, 2006, the  
17 Court directed that the parties' initial discovery should be limited to the core liability  
18 issues as reflected by the representative list of copyrighted works annexed as Exhibit  
19 A to the First Amended Complaint. Proof of ownership and direct infringement of the  
20 thousands of works infringed by defendants therefore will not be at issue until after a  
21 finding of liability, and thus individualized discovery to challenge ownership of each  
22 work is inappropriate at this stage. Plaintiffs decline to produce documents on the  
23 basis of the foregoing general and specific objections.

24 Plaintiffs specifically object to this Request as overbroad and unduly  
25 burdensome to the extent that it seeks discovery concerning Affirmative Defense No.  
26 33 in Defendants' Answer. On June 13, 2007, plaintiffs served defendants with the  
27 Rule 11 Motion, which, among others, seeks to strike Affirmative Defense No. 33,  
28

1 from defendants' Answer as frivolous, and either having no evidentiary support or as  
2 not warranted by law, or both. Plaintiffs decline to produce documents on the basis of  
3 the foregoing objection.

4 Plaintiffs further object to this Request as overbroad, unduly burdensome,  
5 harassing, and seeking information not relevant to the claims and defenses at issue in  
6 this case. Plaintiffs decline to produce documents on the basis of the foregoing  
7 objections.

8 Plaintiffs further specifically object to this Request to the extent that it calls for  
9 materials protected by the attorney-client privilege, the joint defense or common  
10 interest privilege, the work product doctrine or any other applicable privilege or  
11 doctrine, or that it seeks the disclosure of communications with, facts known by, or  
12 opinions held by non-testifying experts retained pursuant or specially employed in  
13 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
14 26(b)(4)(B), and plaintiffs decline to produce such documents.

15 Plaintiffs further object to this Request to the extent that it is not limited to time  
16 periods reasonably related to the matters at issue in this litigation. Specifically,  
17 plaintiffs object to this Request to the extent that it seeks the production by plaintiffs  
18 of documents or materials prepared, generated, duplicated, communicated, distributed  
19 or transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and  
20 seeking information neither relevant to this action nor likely to lead to the discovery of  
21 admissible evidence, or after the commencement of litigation, as overbroad and  
22 unduly burdensome. Plaintiffs decline to produce documents created before January  
23 1, 2002, or after the commencement of this litigation.

24 Without waiver of and subject to and incorporating the general and specific  
25 objections and express limitations on production as set forth above, plaintiffs will  
26 produce copies of responsive documents relating to the copyright ownership of the  
27  
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1 illustrative set of infringing works attached as Exhibit A to the First Amended  
2 Complaint.

3  
4 86. Produce all documents concerning, evidencing or otherwise relating to actions  
5 or omissions taken by you to follow statutory procedures for registration of the  
6 copyrights of any of the alleged copyrighted material that is the subject of your  
7 complaint.

8 RESPONSE: Plaintiffs incorporate each General Objection and Specific  
9 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
10 Request because it duplicates Request No. 83. Plaintiffs reiterate their objections to  
11 this Request as follows:

12 Plaintiffs incorporate each General Objection and Specific Objection to  
13 Definitions as if set forth herein. Plaintiffs specifically object to this Request as  
14 overbroad and unduly burdensome to the extent that it seeks discovery relating to the  
15 total number of infringing works claimed by the plaintiffs in this case and/or damages.  
16 In the case management conference held on November 6, 2006, the Court directed that  
17 the parties' initial discovery should be limited to the core liability issues as reflected  
18 by the representative list of copyrighted works annexed as Exhibit A to the First  
19 Amended Complaint. Proof of ownership and direct infringement of the thousands of  
20 works infringed by defendants therefore will not be at issue until after a finding of  
21 liability, and thus individualized discovery to challenge ownership of each work is  
22 inappropriate at this stage. Plaintiffs decline to produce documents on the basis of the  
23 foregoing general and specific objections.

24  
25 Plaintiffs specifically object to this Request as overbroad and unduly  
26 burdensome to the extent that it seeks discovery concerning Affirmative Defense No.  
27 30 in defendants' Answer. On June 13, 2007, plaintiffs served defendants with the  
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1 Rule 11 Motion, which, among others, seeks to strike Affirmative Defense No. 30,  
2 from defendants' Answer as frivolous, and either having no evidentiary support or as  
3 not warranted by law, or both. Plaintiffs decline to produce documents on the basis of  
4 the foregoing objection.

5 Plaintiffs further object to this Request as overbroad, unduly burdensome,  
6 harassing, and seeking information not relevant to the claims and defenses at issue in  
7 this case. Plaintiffs further object to this Request as vague and ambiguous in that it  
8 seeks documents about unspecified "omissions." Plaintiffs decline to produce  
9 documents on the basis of the foregoing objections.

10 Plaintiffs further specifically object to this Request to the extent that it calls for  
11 materials protected by the attorney-client privilege, the joint defense or common  
12 interest privilege, the work product doctrine or any other applicable privilege or  
13 doctrine, or that it seeks the disclosure of communications with, facts known by, or  
14 opinions held by non-testifying experts retained pursuant or specially employed in  
15 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
16 26(b)(4)(B), and plaintiffs decline to produce such documents.

17 Plaintiffs further object to this Request to the extent that it is not limited to time  
18 periods reasonably related to the matters at issue in this litigation. Specifically,  
19 plaintiffs object to this Request to the extent that it seeks the production of documents  
20 or materials prepared, generated, duplicated, communicated, distributed or transmitted  
21 either prior to January 1, 2002, as overbroad, unduly burdensome, and seeking  
22 information neither relevant to this action nor likely to lead to the discovery of  
23 admissible evidence, or after the commencement of litigation, as overbroad and  
24 unduly burdensome. Plaintiffs decline to produce documents created before January  
25 1, 2002, or after the commencement of this litigation.  
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1 Without waiver of and subject to and incorporating the general and specific  
2 objections and express limitations on production as set forth above, plaintiffs will  
3 produce copies of responsive documents relating to the copyright ownership of the  
4 illustrative set of infringing works attached as Exhibit A to the First Amended  
5 Complaint.

6  
7 87. Produce all documents concerning, evidencing or otherwise relating to any  
8 actions or omissions taken by you to disclaim pre-existing material in the  
9 subject works.

10 RESPONSE: Plaintiffs incorporate each General Objection and Specific  
11 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
12 Request as overbroad and unduly burdensome to the extent that it seeks discovery  
13 relating to the total number of infringing works claimed by the plaintiffs in this case  
14 and/or damages. In the case management conference held on November 6, 2006, the  
15 Court directed that the parties' initial discovery should be limited to the core liability  
16 issues as reflected by the representative list of copyrighted works annexed as Exhibit  
17 A to the First Amended Complaint. Proof of ownership and direct infringement of the  
18 thousands of works infringed by defendants therefore will not be at issue until after a  
19 finding of liability, and thus individualized discovery to challenge ownership of each  
20 work is inappropriate at this stage. Plaintiffs decline to produce documents on the  
21 basis of the foregoing general and specific objections.

22  
23 Plaintiffs specifically object to this Request as overbroad and unduly  
24 burdensome to the extent that it seeks discovery concerning Affirmative Defense No.  
25 34 in Defendants' Answer. On June 13, 2007, plaintiffs served defendants with the  
26 Rule 11 Motion, which, among others, seeks to strike Affirmative Defense No. 34,  
27 from defendants' Answer as frivolous, and either having no evidentiary support or as  
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1 not warranted by law, or both. Plaintiffs decline to produce documents on the basis of  
2 the foregoing objection.

3 Plaintiffs further object to this Request as overbroad, unduly burdensome,  
4 harassing, and seeking information not relevant to the claims and defenses at issue in  
5 this case. Plaintiffs further object to this Request as vague and ambiguous in that it  
6 seeks documents about unspecified "omissions." Plaintiffs decline to produce  
7 documents on the basis of the foregoing objections.

8 Plaintiffs further specifically object to this Request to the extent that it calls for  
9 materials protected by the attorney-client privilege, the joint defense or common  
10 interest privilege, the work product doctrine or any other applicable privilege or  
11 doctrine, or that it seeks the disclosure of communications with, facts known by, or  
12 opinions held by non-testifying experts retained pursuant or specially employed in  
13 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
14 26(b)(4)(B), and plaintiffs decline to produce such documents.

15 Plaintiffs further object to this Request to the extent that it is not limited to time  
16 periods reasonably related to the matters at issue in this litigation. Specifically,  
17 plaintiffs object to this Request to the extent that it seeks the production by plaintiffs  
18 of documents or materials prepared, generated, duplicated, communicated, distributed  
19 or transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and  
20 seeking information neither relevant to this action nor likely to lead to the discovery of  
21 admissible evidence, or after the commencement of litigation, as overbroad and  
22 unduly burdensome. Plaintiffs decline to produce documents created before January  
23 1, 2002, or after the commencement of this litigation.

24 Without waiver of and subject to and incorporating the general and specific  
25 objections and express limitations on production as set forth above, plaintiffs will  
26 produce copies of responsive documents relating to the copyright ownership of the  
27  
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1 illustrative set of infringing works attached as Exhibit A to the First Amended  
2 Complaint.

3  
4 88. Produce all documents concerning, evidencing or otherwise relating to the  
5 authority and knowledge of the signatory to the copyright registrations of the  
6 subject works to perform such acts.

7 RESPONSE: Plaintiffs incorporate each General Objection and Specific  
8 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
9 Request as overbroad and unduly burdensome to the extent that it seeks discovery  
10 relating to the total number of infringing works claimed by the plaintiffs in this case  
11 and/or damages. In the case management conference held on November 6, 2006, the  
12 Court directed that the parties' initial discovery should be limited to the core liability  
13 issues as reflected by the representative list of copyrighted works annexed as Exhibit  
14 A to the First Amended Complaint. Proof of ownership and direct infringement of the  
15 thousands of works infringed by defendants therefore will not be at issue until after a  
16 finding of liability, and thus individualized discovery to challenge ownership of each  
17 work is inappropriate at this stage. Plaintiffs decline to produce documents on the  
18 basis of the foregoing general and specific objections.

19  
20 Plaintiffs specifically object to this Request as overbroad and unduly  
21 burdensome to the extent that it seeks discovery concerning Affirmative Defense No.  
22 35 in Defendants' Answer. On June 13, 2007, plaintiffs served defendants with the  
23 Rule 11 Motion, which, among others, seeks to strike Affirmative Defense No. 35,  
24 from defendants' Answer as frivolous, and either having no evidentiary support or as  
25 not warranted by law, or both. Plaintiffs decline to produce documents on the basis of  
26 the foregoing objection.

1 Plaintiffs further object to this Request as overbroad, unduly burdensome,  
2 harassing, and seeking information not relevant to the claims and defenses at issue in  
3 this. Plaintiffs decline to produce documents on the basis of the foregoing objections.

4 Plaintiffs further specifically object to this Request to the extent that it calls for  
5 materials protected by the attorney-client privilege, the joint defense or common  
6 interest privilege, the work product doctrine or any other applicable privilege or  
7 doctrine, or that it seeks the disclosure of communications with, facts known by, or  
8 opinions held by non-testifying experts retained pursuant or specially employed in  
9 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
10 26(b)(4)(B), and plaintiffs decline to produce such documents.

11 Plaintiffs further object to this Request to the extent that it is not limited to time  
12 periods reasonably related to the matters at issue in this litigation. Specifically,  
13 plaintiffs object to this Request to the extent that it seeks the production by plaintiffs  
14 of documents or materials prepared, generated, duplicated, communicated, distributed  
15 or transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and  
16 seeking information neither relevant to this action nor likely to lead to the discovery of  
17 admissible evidence, or after the commencement of litigation, as overbroad and  
18 unduly burdensome. Plaintiffs decline to produce documents created before January  
19 1, 2002, or after the commencement of this litigation.

20 Without waiver of and subject to and incorporating the general and specific  
21 objections and express limitations on production as set forth above, plaintiffs will  
22 produce copies of responsive documents relating to the copyright ownership of the  
23 illustrative set of infringing works attached as Exhibit A to the First Amended  
24 Complaint.  
25  
26  
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1 89. Produce all documents concerning, evidencing or otherwise relating to all  
2 editions of the subject works that were available to submit to the U.S. Copyright  
3 Office including, without limitation, the actual edition submitted.

4 RESPONSE: Plaintiffs incorporate each General Objection and Specific  
5 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
6 Request as overbroad and unduly burdensome to the extent that it seeks discovery  
7 relating to the total number of infringing works claimed by the plaintiffs in this case  
8 and/or damages. In the case management conference held on November 6, 2006, the  
9 Court directed that the parties' initial discovery should be limited to the core liability  
10 issues as reflected by the representative list of copyrighted works annexed as Exhibit  
11 A to the First Amended Complaint. Proof of ownership and direct infringement of the  
12 thousands of works infringed by defendants therefore will not be at issue until after a  
13 finding of liability, and thus individualized discovery to challenge ownership of each  
14 work is inappropriate at this stage. Plaintiffs decline to produce documents on the  
15 basis of the foregoing general and specific objections.

16  
17 Plaintiffs specifically object to this Request as overbroad and unduly  
18 burdensome to the extent that it seeks discovery concerning Affirmative Defense No.  
19 32 in Defendants' Answer. On June 13, 2007, plaintiffs served defendants with the  
20 Rule 11 Motion, which, among others, seeks to strike Affirmative Defense No. 32,  
21 from defendants' Answer as frivolous, and either having no evidentiary support or as  
22 not warranted by law, or both. Plaintiffs decline to produce documents on the basis of  
23 the foregoing objection.

24 Plaintiffs further object to this Request as overbroad, unduly burdensome,  
25 harassing, and seeking information not relevant to the claims and defenses at issue in  
26 this case. Plaintiffs decline to produce documents on the basis of the foregoing  
27 objections.  
28

1 Plaintiffs further specifically object to this Request to the extent that it calls for  
2 materials protected by the attorney-client privilege, the joint defense or common  
3 interest privilege, the work product doctrine or any other applicable privilege or  
4 doctrine, or that it seeks the disclosure of communications with, facts known by, or  
5 opinions held by non-testifying experts retained pursuant or specially employed in  
6 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
7 26(b)(4)(B), and plaintiffs decline to produce such documents.

8 Plaintiffs further object to this Request to the extent that it is not limited to time  
9 periods reasonably related to the matters at issue in this litigation. Specifically,  
10 plaintiffs object to this Request to the extent that it seeks the production by plaintiffs  
11 of documents or materials prepared, generated, duplicated, communicated, distributed  
12 or transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and  
13 seeking information neither relevant to this action nor likely to lead to the discovery of  
14 admissible evidence, or after the commencement of litigation, as overbroad and  
15 unduly burdensome. Plaintiffs decline to produce documents created before January  
16 1, 2002, or after the commencement of this litigation.

17 Without waiver of and subject to and incorporating the general and specific  
18 objections and express limitations on production as set forth above, plaintiffs will  
19 produce copies of responsive documents relating to the copyright ownership of the  
20 illustrative set of infringing works attached as Exhibit A to the First Amended  
21 Complaint.  
22

23  
24 90. Produce all documents concerning, evidencing or otherwise relating to any  
25 actions or omissions taken by you to comply with the copyright notification  
26 requirements of the Digital Millennium Copyright Act, 17 U.S.C. § 512.  
27  
28

1           RESPONSE: Plaintiffs incorporate each General Objection and Specific  
2 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
3 Request on the grounds that it lacks foundation, is vague and ambiguous in failing to  
4 define the terms “requirements” and “comply”, and as vague and ambiguous in that it  
5 seeks documents about unspecified “omissions”. Plaintiffs further object to this  
6 Request to the extent that it seeks documents between plaintiffs and third parties on  
7 the grounds that it is overbroad, unduly burdensome, harassing and does not seek  
8 evidence relevant to the claims and defenses in this case. Plaintiffs decline to produce  
9 documents on the basis of the foregoing general and specific objections.  
10

11           Plaintiffs further specifically object to this Request to the extent responsive  
12 documents are already in defendants’ possession on the grounds that it is unduly  
13 burdensome, oppressive, and harassing, and would needlessly increase the cost of  
14 litigation. Plaintiffs decline to produce documents on the basis of the foregoing  
15 specific objection.

16           Plaintiffs further specifically object to this Request to the extent that it calls for  
17 materials protected by the attorney-client privilege, the joint defense or common  
18 interest privilege, the work product doctrine or any other applicable privilege or  
19 doctrine, or that it seeks the disclosure of communications with, facts known by, or  
20 opinions held by non-testifying experts retained pursuant or specially employed in  
21 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
22 26(b)(4)(B), and plaintiffs decline to produce such documents.

23           Plaintiffs further object to this Request to the extent that it is not limited to time  
24 periods reasonably related to the matters at issue in this litigation. Specifically,  
25 plaintiffs object to this Request to the extent that it seeks the production by plaintiffs  
26 of documents or materials prepared, generated, duplicated, communicated, distributed  
27 or transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and  
28



1 seeking information neither relevant to this action nor likely to lead to the discovery of  
2 admissible evidence, or after the commencement of litigation, as overbroad and  
3 unduly burdensome. Plaintiffs decline to produce documents created before January  
4 1, 2002, or after the commencement of this litigation.

5 Without waiver of and subject to and incorporating the general and specific  
6 objections and express limitations on production as set forth above, plaintiffs respond  
7 that they have produced responsive, non-privileged documents on February 23, 2007  
8 and will produce any additional responsive, non-privileged documents not subject to  
9 the foregoing objections that have been located after a reasonable search, and that are  
10 not already in defendants' possession.  
11

12  
13 91. Produce all documents concerning, evidencing or otherwise relating to any  
14 actions or omissions taken by you to grant any license to any party to use the  
15 subject works.

16 RESPONSE: Plaintiffs incorporate each General Objection and Specific  
17 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
18 Request as overbroad and unduly burdensome to the extent that it seeks discovery  
19 relating to the total number of infringing works claimed by the plaintiffs in this case  
20 and/or damages. In the case management conference held on November 6, 2006, the  
21 Court directed that the parties' initial discovery should be limited to the core liability  
22 issues as reflected by the representative list of copyrighted works annexed as Exhibit  
23 A to the First Amended Complaint. Proof of ownership and direct infringement of the  
24 thousands of works infringed by defendants therefore will not be at issue until after a  
25 finding of liability, and thus individualized discovery to challenge ownership of each  
26 work is inappropriate at this stage. Plaintiffs decline to produce documents on the  
27 basis of the foregoing general and specific objections.  
28

1 Plaintiffs specifically object to this Request as overbroad and unduly  
2 burdensome to the extent that it seeks discovery concerning Affirmative Defense No.  
3 11 in Defendants' Answer. On June 13, 2007, plaintiffs served defendants with the  
4 Rule 11 Motion, which, among others, seeks to strike Affirmative Defense No. 11,  
5 from defendants' Answer as frivolous, and either having no evidentiary support or as  
6 not warranted by law, or both. Plaintiffs decline to produce documents on the basis of  
7 the foregoing objection.

8 Plaintiffs further object to this Request as overbroad, unduly burdensome,  
9 harassing, and seeking information not relevant to the claims and defenses at issue in  
10 this case. Plaintiffs further object to this Request as vague and ambiguous in that it  
11 seeks documents about unspecified "omissions." Plaintiffs decline to produce  
12 documents on the basis of the foregoing objections.

13 Plaintiffs further specifically object to this Request to the extent that it calls for  
14 materials protected by the attorney-client privilege, the joint defense or common  
15 interest privilege, the work product doctrine or any other applicable privilege or  
16 doctrine, or that it seeks the disclosure of communications with, facts known by, or  
17 opinions held by non-testifying experts retained pursuant or specially employed in  
18 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
19 26(b)(4)(B), and plaintiffs decline to produce such documents.

20 Plaintiffs further object to this Request to the extent that it is not limited to time  
21 periods reasonably related to the matters at issue in this litigation. Specifically,  
22 plaintiffs object to this Request to the extent that it seeks the production by plaintiffs  
23 of documents or materials prepared, generated, duplicated, communicated, distributed  
24 or transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and  
25 seeking information neither relevant to this action nor likely to lead to the discovery of  
26 admissible evidence, or after the commencement of litigation, as overbroad and  
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1 unduly burdensome. Plaintiffs decline to produce documents created before January  
2 1, 2002, or after the commencement of this litigation.

3 Without waiver of and subject to and incorporating the general and specific  
4 objections and express limitations on production as set forth above, plaintiffs will  
5 produce copies of responsive documents relating to the copyright ownership of the  
6 illustrative set of infringing works attached as Exhibit A to the First Amended  
7 Complaint.  
8

9  
10 92. Produce all documents concerning, evidencing or otherwise relating to any  
11 actions or omissions taken by you that provide any evidence that you have  
12 standing to bring this action.

13 RESPONSE: Plaintiffs incorporate each General Objection and Specific  
14 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
15 Request as overbroad and unduly burdensome to the extent that it seeks discovery  
16 relating to the total number of infringing works claimed by the plaintiffs in this case  
17 and/or damages. In the case management conference held on November 6, 2006, the  
18 Court directed that the parties' initial discovery should be limited to the core liability  
19 issues as reflected by the representative list of copyrighted works annexed as Exhibit  
20 A to the First Amended Complaint. Proof of ownership and direct infringement of the  
21 thousands of works infringed by defendants therefore will not be at issue until after a  
22 finding of liability, and thus individualized discovery to challenge ownership of each  
23 work is inappropriate at this stage. Plaintiffs decline to produce documents on the  
24 basis of the foregoing general and specific objections.

25 Plaintiffs specifically object to this Request as overbroad and unduly  
26 burdensome to the extent that it seeks discovery concerning Affirmative Defense No.  
27 13 in Defendants' Answer. On June 13, 2007, plaintiffs served defendants with the  
28

1 Rule 11 Motion, which, among others, seeks to strike Affirmative Defense No. 11,  
2 from defendants' Answer as frivolous, and either having no evidentiary support or as  
3 not warranted by law, or both. Plaintiffs decline to produce documents on the basis of  
4 the foregoing objection.

5 Plaintiffs further object to this Request as overbroad, unduly burdensome,  
6 harassing, and seeking information not relevant to the claims and defenses at issue in  
7 this case. Plaintiffs further object to this Request as vague and ambiguous in that it  
8 seeks documents about unspecified "omissions." Plaintiffs decline to produce  
9 documents on the basis of the foregoing objections.

10 Plaintiffs further specifically object to this Request to the extent that it calls for  
11 materials protected by the attorney-client privilege, the joint defense or common  
12 interest privilege, the work product doctrine or any other applicable privilege or  
13 doctrine, or that it seeks the disclosure of communications with, facts known by, or  
14 opinions held by non-testifying experts retained pursuant or specially employed in  
15 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
16 26(b)(4)(B), and plaintiffs decline to produce such documents.

17 Plaintiffs further object to this Request to the extent that it is not limited to time  
18 periods reasonably related to the matters at issue in this litigation. Specifically,  
19 plaintiffs object to this Request to the extent that it seeks the production by plaintiffs  
20 of documents or materials prepared, generated, duplicated, communicated, distributed  
21 or transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and  
22 seeking information neither relevant to this action nor likely to lead to the discovery of  
23 admissible evidence, or after the commencement of litigation, as overbroad and  
24 unduly burdensome. Plaintiffs decline to produce documents created before January  
25 1, 2002, or after the commencement of this litigation.  
26  
27  
28

1 Without waiver of and subject to and incorporating the general and specific  
2 objections and express limitations on production as set forth above, plaintiffs will  
3 produce copies of responsive documents relating to the copyright ownership of the  
4 illustrative set of infringing works attached as Exhibit A to the First Amended  
5 Complaint.

6  
7 93. Produce all documents concerning, evidencing or otherwise relating to any  
8 damages you have suffered as a result of any of the allegations asserted in your  
9 complaint.

10 RESPONSE: Plaintiffs incorporate each General Objection and Specific  
11 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
12 Request as overbroad and unduly burdensome to the extent that it seeks discovery  
13 relating to the total number of infringing works claimed by the plaintiffs in this case  
14 and/or damages. In the case management conference held on November 6, 2006, the  
15 Court directed that the parties' initial discovery should be limited to the core liability  
16 issues as reflected by the representative list of copyrighted works annexed as Exhibit  
17 A to the First Amended Complaint. Plaintiffs decline to produce documents on the  
18 basis of the foregoing general and specific objections.

19  
20 Plaintiffs specifically object to this Request as overbroad and unduly  
21 burdensome to the extent that it seeks discovery concerning Affirmative Defenses  
22 numbered 5, 10-15, 17, 23-27, 30-36, 38 and 39 in defendants' Answer. On June 13,  
23 2007, plaintiffs served defendants with the Rule 11 Motion, which, among others,  
24 seeks to strike Affirmative Defenses numbered 5, 10-15, 17, 23-27, 30-36, 38 and 39,  
25 from defendants' Answer as frivolous, and either having no evidentiary support or as  
26 not warranted by law, or both. Plaintiffs decline to produce documents on the basis of  
27 the foregoing objection.  
28

1 Plaintiffs further specifically object to this Request to the extent that it calls for  
2 documents created or maintained by defendants, for documents already in defendants'  
3 possession, or for information readily accessible to defendants in the public record, on  
4 the grounds that it is unduly burdensome, oppressive, and harassing, and would  
5 needlessly increase the cost of litigation. Plaintiffs decline to produce documents on  
6 the basis of the foregoing objection.

7 Plaintiffs further specifically object to this Request on the grounds that it is  
8 overbroad and unduly burdensome in that it requests documents not relevant to any  
9 claim or defense in this litigation and not calculated to lead to the discovery of  
10 admissible evidence. Plaintiffs further specifically object to this Request to the extent  
11 that it calls for materials protected by the attorney-client privilege, the joint defense or  
12 common interest privilege, the work product doctrine or any other applicable privilege  
13 or doctrine, or that it seeks the disclosure of communications with, facts known by, or  
14 opinions held by non-testifying experts retained pursuant or specially employed in  
15 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
16 26(b)(4)(B), and plaintiffs decline to produce such documents.

17 Plaintiffs further object to this Request to the extent that it is not limited to time  
18 periods reasonably related to the matters at issue in this litigation. Specifically,  
19 plaintiffs object to this Request to the extent that it seeks the production by plaintiffs  
20 of documents or materials prepared, generated, duplicated, communicated, distributed  
21 or transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and  
22 seeking information neither relevant to this action nor likely to lead to the discovery of  
23 admissible evidence, or after the commencement of litigation, as overbroad and  
24 unduly burdensome. Plaintiffs decline to produce documents created before January  
25 1, 2002, or after the commencement of this litigation.  
26  
27  
28



1 Without waiver of and subject to and incorporating the general and specific  
2 objections and express limitations on production as set forth above, plaintiffs will  
3 produce copies of responsive documents relating to the copyright ownership of the  
4 illustrative set of infringing works attached as Exhibit A to the First Amended  
5 Complaint.

6  
7 94. Produce all documents concerning, evidencing or otherwise relating to any  
8 evidence to establish the validity of the copyright registrations upon which you  
9 rely in bringing this action.

10 RESPONSE: Plaintiffs incorporate each General Objection and Specific  
11 Objection to Definitions as if set forth herein. Plaintiffs specifically object to this  
12 Request as overbroad and unduly burdensome to the extent that it seeks discovery  
13 relating to the total number of infringing works claimed by the plaintiffs in this case  
14 and/or damages. In the case management conference held on November 6, 2006, the  
15 Court directed that the parties' initial discovery should be limited to the core liability  
16 issues as reflected by the representative list of copyrighted works annexed as Exhibit  
17 A to the First Amended Complaint. Proof of ownership and direct infringement of the  
18 thousands of works infringed by defendants therefore will not be at issue until after a  
19 finding of liability, and thus individualized discovery to challenge ownership of each  
20 work is inappropriate at this stage. Plaintiffs decline to produce documents on the  
21 basis of the foregoing general and specific objections.

22 Plaintiffs specifically object to this Request as overbroad and unduly  
23 burdensome to the extent that it seeks discovery concerning Affirmative Defenses  
24 numbered 30-36 in Defendants' Answer. On June 13, 2007, plaintiffs served  
25 defendants with the Rule 11 Motion, which, among others, seeks to strike Affirmative  
26 Defenses numbered 30-36 from defendants' Answer as frivolous, and either having no  
27  
28

1 evidentiary support or as not warranted by law, or both. Plaintiffs decline to produce  
2 documents on the basis of the foregoing objection.

3         Plaintiffs further object to this Request as overbroad, unduly burdensome,  
4 harassing, and seeking information not relevant to the claims and defenses at issue in  
5 this case. Plaintiffs further object to this Request as vague and ambiguous in that it  
6 seeks documents about unspecified “omissions.” Plaintiffs decline to produce  
7 documents on the basis of the foregoing objections.

8         Plaintiffs further specifically object to this Request to the extent that it calls  
9 for materials protected by the attorney-client privilege, the joint defense or common  
10 interest privilege, the work product doctrine or any other applicable privilege or  
11 doctrine, or that it seeks the disclosure of communications with, facts known by, or  
12 opinions held by non-testifying experts retained pursuant or specially employed in  
13 anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ. P.  
14 26(b)(4)(B), and plaintiffs decline to produce such documents.

15         Plaintiffs further object to this Request to the extent that it is not limited to time  
16 periods reasonably related to the matters at issue in this litigation. Specifically,  
17 plaintiffs object to this Request to the extent that it seeks the production by plaintiffs  
18 of documents or materials prepared, generated, duplicated, communicated, distributed  
19 or transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and  
20 seeking information neither relevant to this action nor likely to lead to the discovery of  
21 admissible evidence, or after the commencement of litigation, as overbroad and  
22 unduly burdensome. Plaintiffs decline to produce documents created before January  
23 1, 2002, or after the commencement of this litigation.

24         Without waiver of and subject to and incorporating the general and specific  
25 objections and express limitations on production as set forth above, plaintiffs will  
26 produce copies of responsive documents relating to the copyright ownership of the  
27  
28



1 illustrative set of infringing works attached as Exhibit A to the First Amended  
2 Complaint.

3  
4  
5 Dated: June 18, 2007

JENNER & BLOCK LLP

6  
7 By:   
8 Gianni P. Servodidio

9 STEVEN B. FABRIZIO  
10 GIANNI P. SERVODIDIO  
11 SAMI J. VALKONEN  
12 JENNER & BLOCK LLP

13 KAREN R. THORLAND  
14 W. ALLAN EDMISTON  
15 LOEB & LOEB LLP

16 GREGORY P. GOECKNER  
17 LAUREN T. NGUYEN  
18 15503 Ventura Boulevard  
19 Encino, CA 91436

20 *Attorneys for Plaintiffs*  
21  
22  
23  
24  
25  
26  
27  
28

## **EXHIBIT C**

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ROTHKEN LAW FIRM LLP  
3 Hamilton Landing, Suite 280  
Novato, CA 94949  
Telephone: (415) 924-4250  
Facsimile: (415) 924-2905

Attorney for Defendants  
Gary Fung and Isohunt Web Technologies, Inc.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

COLUMBIA PICTURES, et. al.,  
Plaintiffs,

vs.

GARY FUNG, et. al.,  
Defendants.

Case No. CV06-5578-SVW (JCx)

INTERROGATORIES

FRCP 33

PROPOUNDING PARTY: Defendant GARY FUNG.

RESPONDING PARTY: Plaintiffs Columbia Pictures Industries Inc, Disney Enterprises Inc, Paramount Pictures Corporation, TriStar Pictures Inc, Twentieth Century Fox Film Corporation, Universal City Studios LLLP, Universal City Studios Productions LLLP, Warner Bros Entertainment Inc

SET NUMBER: ONE

Propounding party requests that responding party, pursuant to Federal Rule of Civil Procedure 33, respond to the following special interrogatories, under oath.

The interrogatory responses shall be returned to the Rothken Law Firm LLP, 3 Hamilton Landing, Suite 280, Novato, CA 94949, within thirty (30) days of service.

**INTERROGATORIES, SET ONE**

Columbia Pictures, *et al.* v. Fung, et al.  
U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)

**DEFINITIONS**

1. The terms “you” “your,” AND “RESPONDENT” refer to the respective plaintiff responding to these requests and where applicable in this context, plaintiff’s corporate affiliates, predecessors, predecessors of corporate affiliates, representatives, agents, servants, counsel, employees, consultants, and persons authorized to act, acting, or purporting to act on its behalf.

2. The term “defendants” refer to the defendants herein, both collectively and each of them, individually.

3. The term “MPAA” refers to the Motion Picture Association of America.

4. The term “Defendant’s Websites” means the websites, web pages, search engines, trackers, and services, alleged to be under the control or supervision of propounding party or Isohunt Web Technologies, Inc. including, but not limited to, isohunt.com, ed2k-it.com, BTHub, and torrentbox.com, including all content, databases, files, web pages, and software that comprise the site and support, enable, and provide its full range of features and functions, including to users and administrators, and all server hardware on which said content, databases, files, web pages, and software reside.

5. The present tense shall be construed to include the past tense and the past tense shall be construed to include the present tense as required by the context to elicit all information discoverable within the broadest scope of these document requests.

6. The singular shall be construed to include the plural and the plural shall be construed to include the singular as required by the context to elicit all information discoverable within the broadest scope of these interrogatories.

7. "And" and "or" have both conjunctive and disjunctive meanings as required by the context to elicit all information discoverable within the broadest scope of these interrogatories.

8. "Any" and "all" shall mean "each and every."

9. "Communication(s)" means the transmittal of information by any means

**INTERROGATORIES, SET ONE**

Columbia Pictures, *et al.* v. Fung, *et al.*

U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)

1 and includes communication of any kind, whether written, oral, electronic or other.

2 10. The terms "concerning" and "related to" mean, without limitation,  
3 referring to, describing, evidencing, constituting, summarizing, analyzing, studying,  
4 discussing, relating to, and resulting from, and should be construed broadly as  
5 required by the context to elicit all information discoverable within the broadest scope  
6 of these interrogatories.

7 11. "Documents" includes every writing, recording, or record in any form,  
8 whether handwritten, printed, typed, taped, or in any other graphic, digital, magnetic,  
9 optical, or mechanical form, however produced, reproduced, or recorded, and should  
10 be construed to be synonymous in meaning and scope to the usage of this term in  
11 Federal Rule of Civil Procedure 34(a). The term includes, without limitation, all  
12 memoranda, reports, data, correspondence, phone messages, diaries, logs, notes, bills,  
13 invoices, checks, receipts, and e-mail messages, including those within the personal or  
14 private possession, custody, or control of RESPONDENT, including any  
15 RESPONDENT'S officer, director, employee, agent, or individual, as specified in the  
16 definition of "RESPONDENT" above. The term also includes, without limitation, any  
17 data compilations from which information can be obtained, and if necessary,  
18 translated into usable form through the use of any machine, device, or equipment,  
19 whether or not sent, received, or otherwise transmitted. The term also includes, with  
20 limitation, every draft of a document, and any copy that is not identical in each and  
21 every respect to the original or another copy.

22 12. The term "including" shall be construed to mean "including without  
23 limitation."

24 13. Each of the following interrogatories is continuing in nature and  
25 Propounding Party hereby request that if you obtain any additional responsive  
26 information or documents at any later date, you promptly so inform Propounding  
27 Party and submit supplemental or amended answers and documents.

28 14. Any interrogatory relating to any communications or meetings with a

**INTERROGATORIES, SET ONE**

Columbia Pictures, *et al.* v. Fung, *et al.*

U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)

1 corporation, partnership, or other business or governmental entity shall include any  
2 communications or meetings with its officers, directors, controlling shareholders,  
3 employees, representatives, agents, and attorneys acting on the entity's behalf.

4 15. If you believe that any of the following interrogatories calls for assertions  
5 of a claim of privilege, answer so much of the interrogatory as is not objected to, and  
6 set forth with respect to each specific item of information as to which a claim of  
7 privilege is asserted the nature of the privilege asserted (e.g. attorney-client, work  
8 product, etc.) and the basis for your claim. For each item of information as to which  
9 you claim privilege, provide a privilege log.

10 16. If for reasons other than a claim of privilege, you refuse to answer any  
11 interrogatory, state the grounds upon which the refusal is based with sufficient  
12 specificity to permit a determination of the propriety of such refusal.

13 17. If you are unable to answer in interrogatory in full or in part, you should  
14 answer it to the extent possible, and state an explanation as to why the remainder  
15 cannot be answered and a statement as to the nature of the information or knowledge  
16 that cannot be furnished. If you know the name of an individual or entity possessing  
17 any or all of the information sought by the interrogatory that you cannot furnish,  
18 disclose the name and address of such individual or entity and the nature of the  
19 information possessed by such individual or entity.

20 18. Whenever you are instructed to state a date, a dollar amount, number, or  
21 quantification, if such date, dollar amount, number, or quantification is unknown to  
22 you, state your best estimate, indicate that the response is an estimate, and explain  
23 why you are unable to provide a more precise response.

24 19. Whenever you are instructed to "identify" a specific individual, please  
25 indicate: (a) the full name of the individual; (b) the current address and phone number  
26 of the individual, or, if that is not known, the most recent address and phone number  
27 of which you are aware and any other address and phone number at which you are  
28 aware that the individual may be contacted; and (c) a short description of the

**INTERROGATORIES, SET ONE**

Columbia Pictures, *et al.* v. Fung, *et al.*

U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)



1 individual's relationship to you, including the individual's employment position or title  
2 if that individual is or has been employed by you.

3 20. When the identity or description of an oral communication is requested,  
4 please indicate: (a) the means of communication (i.e., telephonic, in-person); (b) the  
5 date or dates of the conversation; (c) the location(s) at which the conversation took  
6 place; (d) the identity of each person participating in the conversation or witnessing  
7 the conversation; (e) the substance of the conversation.

8 21. When the identity or description of a document is requested, please  
9 indicate: (a) the type of document, such as a letter, memorandum, e-mail message,  
10 etc.; (b) the title, if any, of the document; (c) the date of the document; (d) the identity  
11 of the individual who authored the document; (e) the identity of individuals to whom  
12 the document is addressed; (f) the identities of all recipients of copies of the  
13 documents; and (g) whether you are in possession of the original or a copy of the  
14 document.

15 22. If any of the documents requested has been lost or destroyed: (a) provide  
16 a written statement, in lieu of each such lost or destroyed document, identifying each  
17 document as described above, and in addition specify the date on which the document  
18 was lost or destroyed, the reasons for loss or destruction, and the individuals with  
19 knowledge of such loss or destruction; and (b) provide any documents existing at the  
20 time of such loss or destruction setting forth or reflecting any policy or procedure then  
21 in effect for destruction or retention of documents.

22 23. You are required to provide separate responses to all of the following  
23 interrogatories.

## 24 25 INTERROGATORIES

26 1. List any and all copyrighted works that you are claiming were illegally copied  
27 in any manner with the assistance of Defendant's Websites, including, the title  
28 of the work/song, the registration number, the number of such copies made, the

### INTERROGATORIES, SET ONE

Columbia Pictures, *et al.* v. Fung, *et al.*

U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)

- 1 hash value, the dates and times that such copies were made and by whom with
- 2 their contact information, where the copies were made, the web sites or URL
- 3 that provided such copies, and the copyright owner(s) of the work/song.
- 4 2. State all the reasons the responding party has not used the DMCA take down
- 5 services located on Defendant's Websites to remove torrent files that the
- 6 responding party believes were/are infringing RESPONDENT's copyrights.
- 7 3. Identify all facts that support your contention that defendants are liable for
- 8 secondary copyright infringement.
- 9 4. State the amount of monetary damages, statutory or otherwise, you believe you
- 10 are entitled to and describe with specificity how such amounts are calculated.
- 11 5. Identify each torrent file ever located on Defendant's Websites or linked to by
- 12 Defendant's Websites that RESPONDENT believes is secondarily infringing its
- 13 Copyrights by complete torrent file name, the identity of RESPONDENT'S
- 14 copyrighted work including name of the work and hash value of the file
- 15 containing the copyrighted work, and date(s) of appearance on Defendant's
- 16 Websites.
- 17 6. Identify each eDonkey hash link ever located on Defendant's Websites or
- 18 linked to by Defendant's Websites that RESPONDENT believes is secondarily
- 19 infringing its Copyrights by complete eDonkey hash link name, hash value, the
- 20 identity of RESPONDENT'S copyrighted work, and date(s) of appearance on
- 21 Defendant's Websites.
- 22 7. State the name, address, telephone number, email address, and relationship to
- 23 you of each person who has knowledge of the facts supporting your response to
- 24 each interrogatory.
- 25 8. Describe any and all documents, including, but not limited to, Bates Stamp
- 26 number if produced in discovery in this action, that refer or relate to your
- 27 responses to each interrogatory or upon which you relied in responding to such
- 28 interrogatories.

**INTERROGATORIES, SET ONE**

Columbia Pictures, *et al.* v. Fung, *et al.*

U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)

1 9. Provide any and all facts (and the source of such facts) that support any claim  
2 that you may have that Defendants had specific knowledge that specific torrent  
3 files or edonkey hash link files on Defendants' Websites infringed or lead to  
4 infringement of specific copyrighted works alleged in the Complaint or for  
5 which you are claiming damages in this case.  
6

7 Dated: May 18, 2007

ROTHKEN LAW FIRM LLP

8  
9  
10 

11 By: Ira P. Rothken, Esq., (State Bar #160029)  
12 Attorney for Defendants

13 Ira P. Rothken (SBN #160029)  
14 ROTHKEN LAW FIRM LLP  
15 3 Hamilton Landing, Suite 280  
16 Novato, CA 94949  
17 Telephone: (415) 924-4250  
18 Facsimile: (415) 924-2905  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE

I am over the age of 18 years, employed in the county of Marin, and not a party to the within action; my business address is 3 Hamilton Landing, Suite 280, Novato, CA 94949.

On May 18, 2007, I served the within:

**INTERROGATORIES, SET ONE**

By EMAIL, HAND DELIVERY and FEDEX as follows:

**VIA EMAIL AND HAND DELIVERY**

**Karen B. Thorland**  
**Walter A Edmiston**

Loeb and Loeb  
10100 Santa Monica Blvd, Ste 2200  
Los Angeles, CA 90067-4164  
310-282-2000  
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**VIA EMAIL AND HAND DELIVERY**

**Steven B Fabrizio**  
**Katherine A Fallow**  
**Duane Charles Pozza**

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Email: dpozza@jenner.com

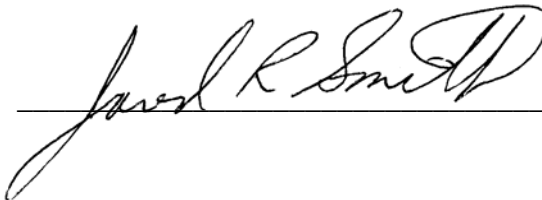
**VIA FEDEX**

**Gregory Paul Goeckner**  
**Lauren T Nguyen**  
Motion Picture Association of America  
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Encino, CA 91436  
818-995-6600

**VIA EMAIL AND FEDEX**

Gianni P Servodidio  
Sami J Valkonen  
Ronald M Daignault  
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New York, NY 10022  
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Email: gservodidio@jenner.com  
Email: svalkonen@jenner.com  
Email: rdaignault@jenner.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 18, 2007.



**INTERROGATORIES, SET ONE**

Columbia Pictures, *et al.* v. Fung, *et al.*  
U.S. Dist. Ct., Central Dist Cal., No. CV 06-5578 SVW (JCx)

## **EXHIBIT D**

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*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

COLUMBIA PICTURES  
INDUSTRIES, INC., *et. al.*

Plaintiffs,

v.

GARY FUNG, *et. al.*

Defendants.

Case No. CV-06-05578 SVW (JCx)

**PLAINTIFFS' OBJECTIONS TO  
DEFENDANTS' FIRST SET OF  
INTERROGATORIES**

**[Fed. R. Civ. P. 33]**



1 Pursuant to Federal Rule of Civil Procedure 33, Plaintiffs Columbia Pictures  
2 Industries, Inc., Disney Enterprises, Inc., Paramount Pictures Corporation, TriStar  
3 Pictures, Inc., Twentieth Century Fox Film Corporation, Universal City Studios  
4 LLLP, Universal City Studios Productions LLLP, and Warner Bros Entertainment  
5 Inc. ("Plaintiffs") hereby respond to Defendants' First Set of Interrogatories (the  
6 "Discovery"):

7 **OBJECTIONS**

8 1. Plaintiffs object to the Discovery to the extent that it calls for the  
9 disclosure of information subject to the attorney-client privilege, the joint defense or  
10 common interest privilege, the work product doctrine or any other applicable  
11 privilege or doctrine. Any inadvertent disclosure of such information shall not be  
12 deemed a waiver of the attorney-client privilege, the joint defense or common  
13 interest privilege, the attorney work product immunity doctrine, or any other  
14 applicable privilege or doctrine.

15 2. Plaintiffs object to the Discovery to the extent that it calls for the  
16 disclosure of communications with, facts known by, or opinions held by non-  
17 testifying experts retained pursuant or specially employed in anticipation of  
18 litigation or preparation of trial, pursuant to Fed. R. Civ. P. 26(b)(4)(B). Any  
19 inadvertent disclosure of such information shall not be deemed a waiver of the  
20 protection against discovery afforded by Rule 26(b)(4)(B) or any other applicable  
21 privilege or doctrine.

22 3. Plaintiffs object to the Discovery to the extent that it calls for the  
23 disclosure of information beyond that required by the Federal Rules of Civil  
24 Procedure or the Local Rules of the Court.

25 4. Plaintiffs object to the Discovery to the extent that it is not reasonably  
26 calculated to lead to the discovery of admissible evidence, and is ambiguous,  
27 duplicative, vague, oppressive, harassing, overbroad or unduly burdensome.  
28

1 Plaintiffs further object to the Discovery because the burdens imposed by  
2 responding to the Discovery far outweigh any potential value of responding to the  
3 Discovery.

4       5.       Plaintiffs object to the Discovery to the extent that it calls for  
5 information in documents created or maintained by Defendants, for information  
6 already in Defendants' possession, or for information readily accessible to  
7 Defendants in the public record, on the grounds that it is unduly burdensome,  
8 oppressive, and harassing, and would needlessly increase the cost of litigation.

9       6.       Plaintiffs object to the Discovery to the extent that it is not limited to  
10 time periods reasonably related to the matters at issue in this litigation. Specifically,  
11 plaintiffs object to the Discovery to the extent that it seeks information in documents  
12 or materials prepared, generated, duplicated, communicated, distributed or  
13 transmitted either prior to January 1, 2002, as overbroad, unduly burdensome, and  
14 seeking information neither relevant to this action nor likely to lead to the discovery  
15 of admissible evidence, or after the commencement of litigation, as overbroad and  
16 unduly burdensome.

17       7.       Plaintiffs object to the terms "any" and "all" with respect to certain of  
18 the Interrogatories. Plaintiffs undertake to provide such information as they are able  
19 to locate after reasonable and diligent investigation. By answering, Plaintiffs do not  
20 certify that "any" or "all" items of responsive information have been obtained and  
21 reserve the right to supplement their answers as more information becomes  
22 available.

23       8.       Plaintiffs object to the definition of the terms "you," "your,  
24 "responding party" and "RESPONDENT" as overbroad, not reasonably calculated  
25 to lead to the discovery of admissible evidence, and unduly burdensome. For the  
26 purposes of this Discovery, Plaintiffs will respond, to the extent applicable, on  
27  
28

1 behalf of each Plaintiff in suit and/or, as appropriate, on behalf of related persons or  
2 entities that reasonably may possess responsive information.

3 9. Plaintiffs object to the Discovery to the extent it seeks unavailable  
4 information or information not currently in their possession, custody or control.

5 10. Plaintiffs object to the Discovery to the extent that it seeks information  
6 constituting trade secrets or other financial, technical, research, development,  
7 strategic, or commercial information.

8 11. Plaintiffs object to the Discovery to the extent that it seeks discovery  
9 concerning the total number of infringing works claimed by the plaintiffs in this  
10 case and/or damages. In the case management conference held on November 6,  
11 2006, the Court directed that proceedings on remedial issues such as these will be  
12 deferred until after summary judgment proceedings on the core issue of defendants'  
13 secondary liability.

14 Plaintiffs incorporate these General Objections into each specific response as  
15 if fully set forth in each response.

### 16 **RESPONSES**

17 1. List any and all copyrighted works that you are claiming were illegally  
18 copied in any manner with the assistance of Defendant's Websites, including,  
19 the title of the work/song, the registration number, the number of such copies  
20 made, the hash value, the dates and times that such copies were made and by  
21 whom with their contact information, where the copies were made, the web  
22 sites or URL that provided such copies, and the copyright owner(s) of the  
23 work/song.

24 RESPONSE: Plaintiffs incorporate each General Objection as if set forth  
25 herein. Plaintiffs further object to Interrogatory No. 1 on the grounds that it seeks  
26 information that is beyond the scope of the case management plan directed by Judge  
27 Wilson at the Nov. 6, 2006 case management conference, which requires the parties'  
28

1 discovery to be limited to core liability issues as reflected by the representative list  
2 of copyrighted works annexed as Exhibit A to the First Amended Complaint.  
3 Plaintiffs further object to this Interrogatory on the grounds that it is premature in  
4 that plaintiffs have not completed discovery in this action, and Plaintiffs'  
5 investigation is ongoing; and on the grounds that information supporting Plaintiffs'  
6 claims is in the possession, custody, or control of Defendants, their agents, and third  
7 parties. Plaintiffs further object to this Interrogatory on the grounds that it is vague  
8 and ambiguous. Plaintiffs further object to this Interrogatory on the grounds that it  
9 is overbroad, unduly burdensome and not reasonably calculated to lead to the  
10 discovery of admissible evidence. Plaintiffs object to this Interrogatory to the extent  
11 that it seeks information that is subject to the attorney-client privilege, the joint  
12 defense or common interest privilege, the work product doctrine or any other  
13 applicable privilege or doctrine, or that it seeks the disclosure of communications  
14 with, facts known by, or opinions held by non-testifying experts retained pursuant or  
15 specially employed in anticipation of litigation or preparation of trial, pursuant to  
16 Fed. R. Civ. P. 26(b)(4)(B).

17 Without waiver of and subject to and incorporating the specific and general  
18 objections set forth above, and pursuant to Rule 33(d) of the Federal Rules of Civil  
19 Procedure, Plaintiffs will produce copies of documents relating to the copyright  
20 ownership of the representative list of works in the First Amended Complaint.  
21

22 2. State all the reasons the responding party has not used the DMCA take  
23 down services located on Defendant's Websites to remove torrent files that  
24 the responding party believes were/are infringing RESPONDENT's  
25 copyrights.

26 RESPONSE: Plaintiffs incorporate each General Objection as if set forth  
27 herein. Plaintiffs further object to Interrogatory No. 2 on the grounds that it assumes  
28

1 facts not in evidence and is irrelevant, overbroad, unduly burdensome and not  
2 reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs  
3 further object to this Interrogatory on the grounds that it is vague and ambiguous.  
4 Plaintiffs object to this Interrogatory on the grounds that it calls for a legal  
5 conclusion. Plaintiffs further object to this Interrogatory to the extent that it seeks  
6 information that is subject to the attorney-client privilege, the joint defense or  
7 common interest privilege, the work product doctrine or any other applicable  
8 privilege or doctrine, or that it seeks the disclosure of communications with, facts  
9 known by, or opinions held by non-testifying experts retained pursuant or specially  
10 employed in anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ.  
11 P. 26(b)(4)(B).

12  
13 3. Identify all facts that support your contention that defendants are liable  
14 for secondary copyright infringement.

15 RESPONSE: Plaintiffs incorporate each General Objection as if set forth  
16 herein. Plaintiffs object to Interrogatory No. 3 on the grounds that it is a contention  
17 interrogatory and is premature given that discovery is not complete and the court's  
18 schedule directs the parties to serve summary judgment motions not later than Aug.  
19 20, 2007, at which time defendants will have plaintiffs' case laid out for them,  
20 complete with plaintiffs' legal theories and evidence. Plaintiffs further object to this  
21 Interrogatory on the grounds that it calls for a legal conclusion. Plaintiffs further  
22 object to this Interrogatory on the grounds that it is premature in that Defendants  
23 have not completed discovery in this action, and Plaintiffs' investigation is ongoing;  
24 and on the grounds that information supporting Plaintiffs' claims is in the  
25 possession, custody, or control of Defendants, their agents, and third parties.  
26 Plaintiffs further object to this Interrogatory on the grounds that it is overbroad,  
27 unduly burdensome and not reasonably calculated to lead to the discovery of  
28 admissible evidence. Plaintiffs further object to this Interrogatory to the extent that

1 it seeks information that is subject to the attorney-client privilege, the joint defense  
2 or common interest privilege, the work product doctrine or any other applicable  
3 privilege or doctrine, or that it seeks the disclosure of communications with, facts  
4 known by, or opinions held by non-testifying experts retained pursuant or specially  
5 employed in anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ.  
6 P. 26(b)(4)(B).

7  
8 4. State the amount of monetary damages, statutory or otherwise, you  
9 believe you are entitled to and describe with specificity how such amounts are  
10 calculated.

11 RESPONSE: Plaintiffs incorporate each General Objection as if set forth  
12 herein. Plaintiffs object to Interrogatory No. 4 on the grounds that it is a contention  
13 interrogatory and is premature given that discovery is not complete and the court's  
14 schedule directs the parties to serve summary judgment motions not later than Aug.  
15 20, 2007, at which time defendants will have plaintiffs' case laid out for them,  
16 complete with plaintiffs' legal theories and evidence. Plaintiffs further object to  
17 Interrogatory No. 4 on the grounds that it seeks information that is beyond the scope  
18 of the case management plan directed by Judge Wilson at the Nov. 6, 2006 case  
19 management conference, which requires the parties' discovery to be limited to core  
20 liability issues as reflected by the representative list of copyrighted works annexed  
21 as Exhibit A to the First Amended Complaint. Plaintiffs further object to this  
22 Interrogatory on the grounds that it is premature in that Defendants have not  
23 completed discovery in this action, and Plaintiffs' investigation is ongoing.  
24 Plaintiffs further object to this Interrogatory on the grounds that information  
25 supporting Plaintiffs' claims is in the possession, custody, or control of Defendants,  
26 their agents, and third parties. Plaintiffs further object to this Interrogatory on the  
27 grounds that it calls for a legal conclusion. Plaintiffs further object to this  
28



1 Interrogatory to the extent that it seeks information that is subject to the attorney-  
2 client privilege, the joint defense or common interest privilege, the work product  
3 doctrine or any other applicable privilege or doctrine, or that it seeks the disclosure  
4 of communications with, facts known by, or opinions held by non-testifying experts  
5 retained pursuant or specially employed in anticipation of litigation or preparation of  
6 trial, pursuant to Fed. R. Civ. P. 26(b)(4)(B).

7  
8 5. Identify each torrent file ever located on Defendant's Websites or  
9 linked to by Defendant's Websites that RESPONDENT believes is  
10 secondarily infringing its Copyrights by complete torrent file name, the  
11 identity of RESPONDENT'S copyrighted work including name of the work  
12 and hash value of the file containing the copyrighted work, and date(s) of  
13 appearance on Defendant's Websites.

14 RESPONSE: Plaintiffs incorporate each General Objection as if set forth  
15 herein. Plaintiffs further object to Interrogatory No. 5 on the grounds that it is a  
16 contention interrogatory and is premature given that discovery is not complete and  
17 the court's schedule directs the parties to serve summary judgment motions not later  
18 than Aug. 20, 2007, at which time defendants will have plaintiffs' case laid out for  
19 them, complete with plaintiffs' legal theories and evidence. Plaintiffs further object  
20 to Interrogatory No. 5 on the grounds that it seeks information that is beyond the  
21 scope of the case management plan directed by Judge Wilson at the Nov. 6, 2006  
22 case management conference, which requires the parties' discovery to be limited to  
23 core liability issues as reflected by the representative list of copyrighted works  
24 annexed as Exhibit A to the First Amended Complaint. Plaintiffs further object to  
25 this Interrogatory on the grounds that it calls for a legal conclusion. Plaintiffs  
26 further object to this Interrogatory on the grounds that it is premature in that  
27 Defendants have not completed discovery in this action, and Plaintiffs' investigation  
28

1 is ongoing; and on the grounds that information supporting Plaintiffs' claims is in  
2 the possession, custody, or control of Defendants, their agents, and third parties.  
3 Plaintiffs further object to this Interrogatory on the grounds that it is vague and  
4 ambiguous and incapable of precise determination as to the information requested.  
5 Plaintiffs further object to this Interrogatory on the grounds that it is overbroad,  
6 unduly burdensome and not reasonably calculated to lead to the discovery of  
7 admissible evidence. Plaintiffs further object to this Interrogatory to the extent that  
8 it seeks information that is subject to the attorney-client privilege, the joint defense  
9 or common interest privilege, the work product doctrine or any other applicable  
10 privilege or doctrine, or that it seeks the disclosure of communications with, facts  
11 known by, or opinions held by non-testifying experts retained pursuant or specially  
12 employed in anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ.  
13 P. 26(b)(4)(B).

14  
15 6. Identify each eDonkey hash link ever located on Defendant's Websites  
16 or linked to by Defendant's Websites that RESPONDENT believes is  
17 secondarily infringing its Copyrights by complete eDonkey hash link name,  
18 hash value, the identity of RESPONDENT'S copyrighted work, and date(s) of  
19 appearance on Defendant's Websites.

20 RESPONSE: Plaintiffs incorporate each General Objection as if set forth  
21 herein. Plaintiffs further object to Interrogatory No. 6 on the grounds that it is a  
22 contention interrogatory and is premature given that discovery is not complete and  
23 the court's schedule directs the parties to serve summary judgment motions not later  
24 than Aug. 20, 2007, at which time defendants will have plaintiffs' case laid out for  
25 them, complete with plaintiffs' legal theories and evidence. Plaintiffs further object  
26 to Interrogatory No. 5 on the grounds that it seeks information that is beyond the  
27 scope of the case management plan directed by Judge Wilson at the Nov. 6, 2006  
28

1 case management conference, which requires the parties' discovery to be limited to  
2 core liability issues as reflected by the representative list of copyrighted works  
3 annexed as Exhibit A to the First Amended Complaint. Plaintiffs further object to  
4 this Interrogatory on the grounds that it calls for a legal conclusion. Plaintiffs  
5 further object to this Interrogatory on the grounds that it is premature in that  
6 Defendants have not completed discovery in this action, and Plaintiffs' investigation  
7 is ongoing; and on the grounds that information supporting Plaintiffs' claims is in  
8 the possession, custody, or control of Defendants, their agents, and third parties.  
9 Plaintiffs further object to this Interrogatory on the grounds that it is vague and  
10 ambiguous and incapable of precise determination as to the information requested.  
11 Plaintiffs further object to this Interrogatory on the grounds that it is overbroad,  
12 unduly burdensome and not reasonably calculated to lead to the discovery of  
13 admissible evidence. Plaintiffs further object to this Interrogatory to the extent that  
14 it seeks information that is subject to the attorney-client privilege, the joint defense  
15 or common interest privilege, the work product doctrine or any other applicable  
16 privilege or doctrine, or that it seeks the disclosure of communications with, facts  
17 known by, or opinions held by non-testifying experts retained pursuant or specially  
18 employed in anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ.  
19 P. 26(b)(4)(B).

20  
21 7. State the name, address, telephone number, email address, and  
22 relationship to you of each person who has knowledge of the facts supporting  
23 your response to each interrogatory.

24 RESPONSE: Plaintiffs incorporate each General Objection as if set forth  
25 herein. Plaintiffs further object to Interrogatory No. 7 to the extent that it seeks  
26 information that is subject to the attorney-client privilege, the joint defense or  
27 common interest privilege, the work product doctrine or any other applicable  
28

1 privilege or doctrine, or that it seeks the disclosure of communications with, facts  
2 known by, or opinions held by non-testifying experts retained pursuant or specially  
3 employed in anticipation of litigation or preparation of trial, pursuant to Fed. R. Civ.  
4 P. 26(b)(4)(B). Plaintiffs further object to this Interrogatory on the grounds that it is  
5 vague and ambiguous because the meaning of “supporting your response” is  
6 unclear.

7 Plaintiffs further object to this Interrogatory to the extent it seeks to determine  
8 whom in-house counsel selected to approach for information responsive to the  
9 interrogatories. The identity of whom counsel selects to approach goes to the  
10 mental impressions and strategies of counsel and is thereby protected from  
11 disclosure by the work product doctrine. See *In re MTI Tech. Corp. Sec. Litig.*, No.  
12 00-0745, 2002 WL 32344347, at \*3 (C.D. Cal. 2002) (“Although the identity and  
13 location of witnesses that may have knowledge of any discoverable matter is not  
14 protected, the identity of witnesses interviewed by opposing counsel is protected.”)  
15 (footnote omitted); *Massachusetts v. First National Supermarkets, Inc.*, 112 F.R.D.  
16 149, 152 (D. Mass. 1986) (holding that interrogatory “asking the identity of persons  
17 contacted and/or interviewed during an investigation” is improper on work product  
18 grounds).

19 Based on the foregoing objections to each interrogatory herein, there are no  
20 responsive persons to be identified.

21  
22 8. Describe any and all documents, including, but not limited to, Bates  
23 Stamp number if produced in discovery in this action, that refer or relate to  
24 your responses to each interrogatory or upon which you relied in responding  
25 to such interrogatories.

26 RESPONSE: Plaintiffs incorporate each General Objection as if set forth  
27 herein. Plaintiffs object to Interrogatory No. 8 on the grounds that it is vague and  
28

1 ambiguous. Plaintiffs further object to this Interrogatory on the grounds that it is  
2 overbroad, unduly burdensome and not reasonably calculated to lead to the  
3 discovery of admissible evidence. Plaintiffs further object to this Interrogatory on  
4 the grounds that it lacks foundation. Plaintiffs further object to this Interrogatory to  
5 the extent that it seeks information that is subject to the attorney-client privilege, the  
6 joint defense or common interest privilege, the work product doctrine or any other  
7 applicable privilege or doctrine, or that it seeks the disclosure of communications  
8 with, facts known by, or opinions held by non-testifying experts retained pursuant or  
9 specially employed in anticipation of litigation or preparation of trial, pursuant to  
10 Fed. R. Civ. P. 26(b)(4)(B). Based on the foregoing objections to each interrogatory  
11 herein, there are no responsive documents to be identified.  
12

13 9. Provide any and all facts (and the source of such facts) that support any  
14 claim that you may have that Defendants had specific knowledge that specific  
15 torrent files or edonkey hash link files on Defendant's Websites infringed or  
16 lead to infringement of specific copyrighted works alleged in the Complaint  
17 or for which you are claiming damages in this case.

18 RESPONSE: Plaintiffs incorporate each General Objection as if set forth  
19 herein. Plaintiffs object to Interrogatory No. 9 on the grounds that it is a contention  
20 interrogatory and is premature given that discovery is not complete and the court's  
21 schedule directs the parties to serve summary judgment motions not later than Aug.  
22 20, 2007, at which time defendants will have plaintiffs' case laid out for them,  
23 complete with plaintiffs' legal theories and evidence. Plaintiffs further object to  
24 Interrogatory No. 5 on the grounds that it seeks information that is beyond the scope  
25 of the case management plan directed by Judge Wilson at the Nov. 6, 2006 case  
26 management conference, which requires the parties' discovery to be limited to core  
27 liability issues as reflected by the representative list of copyrighted works annexed  
28

1 as Exhibit A to the First Amended Complaint. Plaintiffs further object to this  
2 Interrogatory on the grounds that it calls for a legal conclusion. Plaintiffs further  
3 object to this Interrogatory on the grounds that it is premature in that Defendants  
4 have not completed discovery in this action, and Plaintiffs' investigation is ongoing;  
5 and on the grounds that information supporting Plaintiffs' claims is in the  
6 possession, custody, or control of Defendants, their agents, and third parties.  
7 Plaintiffs further object to this Interrogatory on the grounds that it is vague and  
8 ambiguous. Plaintiffs further object to this Interrogatory on the grounds that it is  
9 overbroad, unduly burdensome and not reasonably calculated to lead to the  
10 discovery of admissible evidence. Plaintiffs further object to this Interrogatory to  
11 the extent that it seeks information that is subject to the attorney-client privilege, the  
12 joint defense or common interest privilege, the work product doctrine or any other  
13 applicable privilege or doctrine, or that it seeks the disclosure of communications  
14 with, facts known by, or opinions held by non-testifying experts retained pursuant or  
15 specially employed in anticipation of litigation or preparation of trial, pursuant to  
16 Fed. R. Civ. P. 26(b)(4)(B).

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1 Dated: June 18, 2006

JENNER & BLOCK LLP

2  
3 By:   
4 Gianni P. Servodidio

5 STEVEN B. FABRIZIO  
6 GIANNI P. SERVODIDIO  
7 SAMI J. VALKONEN  
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24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Carole Duran, the undersigned, declare that:

I am employed in the County of New York, State of New York, over the age of 18, and not a party this cause. My business address is 919 Third Avenue, 37th Floor, New York, New York, 10022.

On June 18, 2007, I served a true copy of **PLAINTIFFS' OBJECTIONS TO DEFENDANTS' FIRST SET OF INTERROGATORIES** and **PLAINTIFFS' RESPONSES TO DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS, SET 2** on the parties in this cause as follows:

[X] (VIA FIRST CLASS MAIL) by placing the above named document in a sealed envelope addressed as set forth below and by then causing said envelope to be deposited for collection and delivery via First Class Mail, in accordance with Jenner & Block LLP's ordinary business practices.

[X] (VIA EMAIL) I caused the transmission of the above named document to the email addresses set forth below.

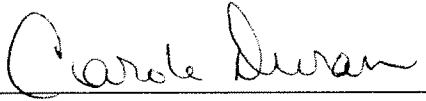
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*Counsel for Defendants*

1 I am readily familiar with Jenner & Block LLP's practice for collecting and  
2 processing correspondence for First Class Mail.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on June 18, 2007, at New York, New York.

5  
6  
7 

8 Carole Duran  
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## **EXHIBIT E**

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3 WESTERN DIVISION  
4

5 THE HONORABLE STEPHEN V. WILSON, U.S. DISTRICT JUDGE PRESIDING  
6

7 COLUMBIA PICTURES INDUSTRIES, )  
8 INC., ET AL., )

9 Plaintiffs, )

10 vs. )

No. CV 06-5578-SVW

11 GARY FUNG, ET AL., )

12 Defendants. )  
13  
14  
15

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 LOS ANGELES, CALIFORNIA

18 MONDAY, JULY 1, 2013  
19

20 **STATUS CONFERENCE**  
21  
22

23 DEBORAH K. GACKLE, CSR, RPR  
24 United States Courthouse  
25 312 North Spring Street, Room 402A  
Los Angeles, California 90012  
(213) 620-1149

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///

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1       **APPEARANCES OF COUNSEL (Continued):**

2

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1 to file a pleading indicating where they have agreed, where  
2 they disagree, and why a particular party's position in the  
3 redrafting of the injunction should be followed. If I have  
4 need to have a further hearing, I'll request it.

5 MR. FABRIZIO: Thank you, Your Honor.

6 THE COURT: Now, with regard to the damages claim,  
7 the court did receive a pleading from the defendants indicating  
8 that it was their view that damages in this case would be too  
9 speculative. Obviously, I'm not in a position to make such a  
10 ruling but, Mr. Fabrizio, could you take the lectern and tell  
11 me how you intend to prove damages.

12 MR. FABRIZIO: Yes, Your Honor. First of all, the  
13 defense that the damages are speculation is not an issue in the  
14 case; plaintiffs are lacking statutory damages.

15 THE COURT: I see.

16 MR. FABRIZIO: In order to prove damages under the  
17 statutory provision, plaintiffs would have to demonstrate  
18 ownership of copyrighted works, that those copyrighted works  
19 were infringed by users of defendant's system, and then there  
20 would be the quantum of per-work statutory damages to be  
21 applied for each work infringed.

22 THE COURT: Give me an example how that would follow.

23 MR. FABRIZIO: We would have a --

24 THE COURT: How many copyrights are involved?

25 MR. FABRIZIO: Your Honor, defendant's website

1 infringed virtually the entire library of motion pictures and  
2 television programs that our clients own. In the damages  
3 proceeding, as a matter of practicalities, there would probably  
4 be three to 5,000, which is probably substantially less than  
5 the tens of thousands that it could be.

6 THE COURT: How do you intend to go about offering a  
7 calculation?

8 MR. FABRIZIO: First, as to the issue of direct  
9 infringement, this issue should be -- come down to a rather  
10 ministerial act because defendants are in -- are in violation  
11 of two court orders to produce the server log data that would  
12 prove direct infringement conclusively. The magistrate judge,  
13 having sanctioned them repeatedly and warned them, has  
14 issued --

15 THE COURT: Start again. I couldn't hear you.

16 MR. FABRIZIO: I'm sorry, Your Honor.

17 The magistrate judge twice ordered defendants to  
18 produce server log data that we would use to conclusively prove  
19 direct infringement of our copyrighted works. Having already  
20 sanctioned defendants five times and having warned defendants  
21 specifically about their failure to comply with these discovery  
22 orders, the magistrate judge issued to Your Honor a report and  
23 recommendation that evidentiary sanctions be entered in this  
24 case and that, effectively, the evidentiary sanction is that  
25 direct infringement be established for plaintiff's works where

1 there were torrent files representing those works on  
2 defendant's sites; and we are awaiting Your Honor's decision as  
3 to whether you are going to adopt that report and  
4 recommendation.

5 THE COURT: That report and recommendation was with  
6 regard to sanctions not the contempt order.

7 MR. FABRIZIO: That's right, Your Honor --

8 THE COURT: Contempt is separate.

9 MR. FABRIZIO: They are completely separate from the  
10 contempt --

11 THE COURT: I want to get to the contempt issue in a  
12 moment, but -- so on the assumption that you get the server,  
13 your view is that it would be somewhat mechanical to determine  
14 the number of infringements?

15 MR. FABRIZIO: Yes, Your Honor, but we're not going  
16 to get the actual data. Defendants have refused to give it to  
17 us, and now that data is gone. They have failed to preserve  
18 it, so that's why the magistrate judge has recommended an  
19 evidentiary sanction, that the issue of direct infringement be  
20 deemed established. So we believe that if you were to adopt  
21 that report and recommendation -- obviously, we believe you  
22 should -- that the issue of direct infringement will be a  
23 relatively ministerial task and won't be one that will need to  
24 take up jury time. As to copyright ownership --

25 THE COURT: When you say won't "take up jury time,"

1 you're saying that you're -- if I adopt the recommendation of  
2 the magistrate, you're suggesting that damages would be a  
3 matter of summary judgment?

4 MR. FABRIZIO: The issue of direct infringement would  
5 be a matter of summary judgment.

6 THE COURT: What about the calculation?

7 MR. FABRIZIO: The parties have an absolute right to  
8 trial by jury in terms of the amount of statutory damages. The  
9 parties can, obviously, waive that right and have Your Honor  
10 try that issue, and the plaintiffs would be willing to do that.

11 THE COURT: Maybe the defendants wouldn't, and the  
12 law now is that even statutory -- even with regard to statutory  
13 damages, the parties have a right to a jury trial.

14 MR. FABRIZIO: Yes, that is correct, Your Honor, the  
15 parties have a right to a jury trial. So if this issue goes to  
16 the jury, the largest issue in this case -- the jury will be  
17 charged that they have a range of damages they can award,  
18 between \$750 per work; and if the court finds that defendant's  
19 conduct is willful -- and we believe the court has effectively  
20 already found that with your liability findings -- the maximum  
21 per work is \$100,000. The jury will be charged that it can  
22 decide between those two numbers, and the factors that the jury  
23 will be able to consider are -- aren't many, but they largely  
24 go to defendant's conduct, egregiousness of defendant's  
25 conduct --

1 THE COURT: What, then, is the -- would be your  
2 argument for the total amount of damages?

3 MR. FABRIZIO: We would argue the defendant's conduct  
4 in this case -- as found by Your Honor and affirmed by the  
5 Ninth Circuit -- is particularly egregious. This was not  
6 inadvertent copyright infringement, it was intentional, willful  
7 copyright infringement, and that the jury should award an  
8 amount of damages that not only will punish defendants but  
9 deter defendants and those like him.

10 THE COURT: But the jury is going to award statutory  
11 damages, correct?

12 MR. FABRIZIO: Yes, Your Honor.

13 THE COURT: And how would the jury calculate those  
14 damages?

15 MR. FABRIZIO: It would simply be the number of works  
16 that are determined to have been infringed times whatever the  
17 jury decides --

18 THE COURT: Between the range of 750 and --

19 MR. FABRIZIO: \$150,000.

20 THE COURT: 750 and 150,000.

21 MR. FABRIZIO: Yes, Your Honor.

22 THE COURT: I see. So the -- without the server --  
23 that's not available, so you said, correct?

24 MR. FABRIZIO: The data that they were supposed to  
25 report does not exist anymore.

1 THE COURT: So how can it be determined, then, that  
2 all of the plaintiff's copyrights were infringed?

3 MR. FABRIZIO: Well, initially, Your Honor, we would  
4 urge Your Honor to adopt the magistrate judge's report and  
5 recommendation, in which case those infringements would be  
6 deemed established. We would simply show --

7 THE COURT: In other words, they're deemed  
8 established as a sanction for destroying evidence.

9 MR. FABRIZIO: And disobeying two court orders.

10 THE CLERK: But in the absence of that, it would seem  
11 that there isn't any evidence.

12 MR. FABRIZIO: No, Your Honor. In the absence of  
13 that, we have copies of what defendant's websites look like; we  
14 have the torrent files representing our client's works that  
15 were available --

16 THE COURT: What files again?

17 MR. FABRIZIO: Torrent files -- the small files that  
18 defendant hosts on their site. They're called ".torrent"  
19 files. So we have copies of what was on defendant's site, and  
20 we would be able to establish, in a much more cumbersome way  
21 that those files represented our client's works, and that by a  
22 preponderance of the evidence, they were downloaded and  
23 infringed.

24 THE COURT: I see.

25 MR. FABRIZIO: So that would be much more of a



1 work-by-work showing, Your Honor, because the evidence that  
2 would have conclusively established --

3 THE COURT: So it seems, prior to getting into the  
4 damage trial, the court has to make a ruling on the  
5 magistrate's recommendation.

6 MR. FABRIZIO: Yes, Your Honor. That would expedite  
7 trial preparation considerably.

8 THE COURT: And since the appeal took some time, was  
9 that issue briefed? In other words, did you file a brief  
10 supporting the magistrate's view, and did the defendants file a  
11 brief opposing it?

12 MR. FABRIZIO: This was actually fully briefed -- I  
13 think a couple of rounds of briefs in front of the magistrate  
14 judge, who issued a proposed report and recommendation that  
15 then we filed objections to, and I think what the magistrate  
16 judge did is take that whole package with a cover memo -- which  
17 the parties haven't seen -- to Your Honor, supporting the  
18 recommendation, and I think everything's now fully briefed and  
19 before Your Honor ready for decision.

20 THE COURT: In other words, the issue was fully  
21 briefed before the magistrate judge and my task is to review  
22 that.

23 MR. FABRIZIO: Yes, Your Honor.

24 THE COURT: Or adopt it or not.

25 MR. FABRIZIO: Yes, Your Honor. If it would make it

1 easy for Your Honor -- or your clerks -- I have a list of all  
2 the docket numbers if you would like. I can hand up it  
3 afterwards --

4 THE COURT: That's all right.

5 And then finally, on the contempt issue, it does seem  
6 to me that the contempt issues stemmed from the injunction,  
7 correct?

8 MR. FABRIZIO: Yes, Your Honor.

9 THE COURT: And the injunction in several parts --  
10 that's what I addressed at the outset -- was viewed by the  
11 Ninth Circuit as being less than clear.

12 So the question becomes if parts of the injunction  
13 were not as clear as they ought to have been, that would seem  
14 to be a built-in defense to contempt.

15 MR. FABRIZIO: No, Your Honor, not in this case.

16 THE COURT: Explain why.

17 MR. FABRIZIO: First of all, the Ninth Circuit in a  
18 25-page opinion had two pages of commentary on the injunction  
19 and found four relatively small issues with it. They all had  
20 to do with provisions that are not at issue in the contempt  
21 motion, so none of what the Ninth Circuit suggested or directed  
22 to be modified has anything to do with any of the issues that  
23 are subject of the contempt motions.

24 THE COURT: I see.

25 MR. FABRIZIO: And it is black letter law in this

1 circuit, Your Honor, that when an appellate court modifies an  
2 injunction in part, the unaffected parts of the injunction  
3 remain in force, and defendants can be held in contempt for  
4 violating them.

5 THE COURT: Let me hear from the defendant.

6 MR. FABRIZIO: If I may, Your Honor, on the contempt  
7 motions? Because defendants -- the contempt motions are not  
8 moot by any stretch.

9 THE COURT: I didn't say they were moot. That wasn't  
10 my thought.

11 MR. FABRIZIO: Okay.

12 THE COURT: It was that they -- they might be  
13 affected by the Ninth Circuit's view of parts of the  
14 injunction. I understand your argument that they're not, but I  
15 want to hear from the defendant.

16 MR. FABRIZIO: One of the motions -- one aspect of  
17 the motions may not be fresh anymore, so is it worth explaining  
18 that to Your Honor?

19 THE COURT: Not right now.

20 MR. FABRIZIO: Okay. Thank you, Your Honor.

21 MR. ELKIN: Your Honor, if I may, Michael Elkin here.  
22 May I just start with Your Honor's invitation to talk about the  
23 damages trial, and then we can circle back on the injunction?

24 THE COURT: Yes.

25 MR. ELKIN: Thank you.

1           The defendant's lost the case on liability relative  
2 to copy -- relative to contributory liability. We know that  
3 from Your Honor's decision and the Ninth Circuit's affirmance  
4 with respect to that. So what we have left in this case, aside  
5 from the injunction issue, is a trial on damages.

6           Mr. Fabrizio, with all due respect, conflated in his  
7 presentation to Your Honor contributory liability, which the  
8 district court found, and direct liability, which has yet to be  
9 adjudicated.

10           THE COURT: I don't think he's conflated anything.  
11 He explained that the direct-liability aspect derives from the  
12 court's adoption, or not, of the magistrate's recommendation.  
13 If the court follows the magistrate's recommendation, direct  
14 liability would be imposed as a sanction.

15           MR. ELKIN: I appreciate that, Your Honor, so let me  
16 do the following: Let me address the contributory liability.  
17 That is the summary judgment finding and order that this court  
18 has entered, as affirmed by the Ninth Circuit Court of Appeals.  
19 So with respect to what is front and center in terms of the  
20 damages trial -- are the following elements: No. 1, under  
21 *Perfect 10 versus Google*, the plaintiffs have to demonstrate  
22 that there is an underlying infringement with respect to any  
23 works that they put into issue. There was a showing to Your  
24 Honor --

25           THE COURT: I'm going to interrupt because I think

1 we're getting too much into the details of the positions. So  
2 what I'm going to do is this: I'm going to first, as I  
3 indicated, order the parties to meet and confer on how the  
4 injunction should be modified or not, and file those pleadings  
5 within 14 days of today -- within seven days of the meet and  
6 confer period, indicating where there's agreement and  
7 disagreement and why one party's position should be followed.

8 With regard to the damage aspect of the case, as a  
9 first matter, I'm going to have to now make a ruling on the  
10 magistrate's recommendation, which I hopefully can do in a  
11 reasonable period of time; then once I make that ruling, I'll  
12 have another hearing on the damage phase and hear your  
13 arguments in greater detail. And with regard to the contempt  
14 argument, I want that briefed. In other words, I want the  
15 plaintiff to first file a brief within ten days of today  
16 explaining your position that the order of contempt -- the  
17 proposed order of contempt -- which was never adopted, correct?

18 MR. FABRIZIO: No, Your Honor, never --

19 THE COURT: -- should -- why it wasn't affected by  
20 the Ninth Circuit's observations regarding parts of the  
21 injunction, and then I'll give you seven days thereafter to  
22 respond.

23 And then you can reply in three days. And we'll have  
24 a hearing -- just one moment.

25 THE CLERK: Plaintiff's brief will be due July 11;

1 defendant's response will be July 18th; and the reply brief  
2 will be July 22nd; hearing will be July 29th at 1:30.

3 THE COURT: Just -- and not to get into this in great  
4 detail, but is it the defense argument that, for some reason,  
5 damages are not available at all?

6 MR. ELKIN: Your Honor, if you could give me two  
7 minutes.

8 THE COURT: Just answer my question.

9 MR. ELKIN: Damages are certainly available with  
10 respect to any claim as to whether liability has been  
11 established. It's only been established as contributory.

12 THE COURT: So let's assume for the moment that  
13 that's where things will stand, there's only a liability for  
14 contributory damages. What is the plaintiff left with? Is the  
15 plaintiff without a damage remedy?

16 MR. ELKIN: I think there are two things: No. 1, the  
17 Ninth Circuit decision -- as Your Honor knows well -- clearly  
18 stated that in order for there to be damages, the plaintiff has  
19 to show a sufficient causal connection between the user's  
20 infringing activity and the use of Fung's trackers. There is  
21 an element of causation relative to the works they're putting  
22 into issue. There were 44 exemplar works that were part of the  
23 amended complaint. Mr. Fabrizio -- we just heard Mr. Fabrizio  
24 talk about three to 5,000 works for which discovery hasn't even  
25 been made available. They have to demonstrate, aside from --

1 with respect to contributory liability, there hasn't been any  
2 adjudication of direct liability. I understand what the  
3 representations --

4 THE COURT: But your argument about the number of  
5 works, as defined in the complaint, would hold true even if  
6 there was direct infringement.

7 MR. ELKIN: With respect to the 44 works, this is  
8 what would have to happen, in our view.

9 THE COURT: You have to answer my questions. You  
10 have an interest in informing the court -- I appreciate that --  
11 but I want you to answer the question.

12 If there was direct infringement, would the direct  
13 infringement be limited to the works described in the  
14 complaint?

15 MR. ELKIN: Yes, it would be, in our review. Until  
16 the court were to permit -- if it would -- an amendment  
17 relevant to new works, it would be, to the extent that the  
18 court would permit that --

19 THE COURT: I understand that. You've answered the  
20 question. I understand it.

21 Now, when you file your pleading regarding the  
22 damages -- I didn't ask you to file a pleading.

23 MR. FABRIZIO: No, Your Honor, we haven't.

24 THE COURT: Well, just in a nutshell, what is your  
25 response to that?



1 MR. FABRIZIO: On the issue of -- that the case is  
2 limited to the works that are named in the complaint --

3 THE COURT: Yes.

4 MR. FABRIZIO: -- at the initial case management  
5 conference with Your Honor, the parties and the court decided  
6 that the liability phase of this case would go forward based on  
7 the 44 or so works that were named in the complaint with the  
8 ability to bring in the other works in the damages phase.

9 THE COURT: But that's what counsel is now saying.  
10 He's saying that there's -- don't you have to prove that?

11 MR. FABRIZIO: We have to prove that they were  
12 directly infringed through the use of defendant's sites, which  
13 the report and recommendation of the magistrate judge would  
14 largely take care of.

15 THE COURT: With regard to the 44.

16 MR. FABRIZIO: No, no. That's already been  
17 established. That was on summary judgment. With regard to the  
18 other -- let's call it -- three to 5,000.

19 THE COURT: Yes. How is that going to be  
20 established?

21 MR. FABRIZIO: That would be -- again, that is what  
22 the magistrate judge's report and recommendation goes to.

23 THE COURT: I'll have to review that, and if I need  
24 further briefing or hearing, I'll let you know. The matter  
25 will stand submitted. Thank you.

1 MR. FABRIZIO: On the dates --

2 THE COURT: No, no. I issued the order.

3 I'm not hearing from the parties any further. I've  
4 given you an opportunity. If I need further comment, I'll  
5 order it. Thank you.

6 (Proceedings concluded at 2:10 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is a true and  
correct transcript from the stenographic record of  
the proceedings in the foregoing matter.

July 8, 2013

/s/ \_\_\_\_\_

\_\_\_\_\_

Deborah K. Gackle  
Official Court Reporter  
CSR No. 7106

Date

U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
COURT REPORTER DEBORAH K. GACKLE

EXHIBIT 6  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

COLUMBIA PICTURES  
INDUSTRIES, INC., *et. al.*

*Plaintiffs,*

v.

GARY FUNG, *et. al.*

*Defendants.*

Case No. CV-06-05578 SVW (JCx)

DISCOVERY MATTER

The Honorable Jacqueline Chooljian

**PLAINTIFFS' AND MPAA'S  
NOTICE OF *EX PARTE*  
APPLICATION AND *EX PARTE*  
APPLICATION FOR PROTECTIVE  
ORDER RE RULE 30(b)(6)  
DEPOSITIONS -- FEES  
REQUESTED**

Summary Judgment Filing Deadline:  
August 20, 2007

Pretrial Conf./Trial Date: TBA

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## NOTICE OF APPLICATION

PLEASE TAKE NOTICE that the above-named plaintiffs and third-party the Motion Picture Association of America (“MPAA”) hereby move *ex parte* for an order (i) limiting defendants’ Rule 30(b)(6) deposition topics as set forth in the proposed order, and (ii) awarding plaintiffs and the MPAA their reasonable costs and attorneys’ fees for the filing of this application. Defendants have served Rule 30(b)(6) notices on the plaintiffs and on the MPAA, plaintiffs’ counsel of record in this action, that vastly exceed the scope of a permissible deposition in this case. This Court has previously ruled on identical issues – multiple times – in the parallel case of *Columbia Pictures Industries, Inc. v. Bunnell*, No. 06-1093 FMC(JCx), involving the same counsel, but counsel for defendants here has refused to consider or be guided by the Court’s express rulings on those issues – or to any basic concept of what is at issue in this case. Accordingly, with the MPAA’s noticed deposition scheduled for early next week, August 7, 2007, plaintiffs and the MPAA are forced to file this *ex parte* application seeking relief from the Court.

This Ex Parte Application is based on this Notice, the accompanying Application; the accompanying Declaration of Steven B. Fabrizio and exhibits; all pleadings on file with the Court; all matters of which the Court may take judicial notice; and all such additional evidence and argument as may be presented to the Court during any hearing on this Application, if a hearing is required.

Plaintiffs and the MPAA have diligently sought the relief requested here through discussions with defendants, including a formal meet-and-confer with defendants’ counsel on July 31, 2007. Defendants’ counsel has stated that because defendants disagree with the Court’s previous rulings and because defendants’ goal is to “create a legally recognizable record for an appellate court to review,” the filing of this *ex parte* application, and the issuance of an order limiting the scope of the deposition, is necessary.

1 Despite the fact that plaintiffs produced substantially all of their documents  
2 many months ago, and defendants' stated intention to take these Rule 30(b)(6)  
3 depositions from the very outset, defendants waited until just a few days ago  
4 (Saturday, July 28th) to serve their deposition notices. Because summary judgment  
5 briefs must be filed no later than August 20, 2007, and the MPAA and plaintiff  
6 studio depositions are noticed for next week, beginning on August 7th, relief must  
7 be had forthwith, and there is not time for this request to be heard on the normal  
8 calendar. Counsel for the defendants has received notice of this Ex Parte  
9 Application pursuant to Local Rule 7-19.1 and met and conferred with plaintiffs'  
10 counsel on July 31, 2007. Defendants have indicated their intention to oppose this  
11 Application.

12 Dated: August 1, 2007

Respectfully submitted,

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By: 

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## EX PARTE APPLICATION

The Court has gone through these issues very recently (multiple times), and the plaintiffs genuinely tried to avoid having to bring them before the Court yet again. The issues presented here, regarding defendants' Rule 30(b)(6) notices to the plaintiff studios and the MPAA, Fabrizio Decl., Exs. 1 (notice to plaintiffs) & 2 (notice to MPAA), are substantively identical to those raised by notices sent by the same defendants' counsel to the same plaintiff studios and MPAA in *Columbia Pictures Industries, Inc. v. Bunnell*, No. 06-1093 FMC(JCx) (the "*Bunnell* Litigation"). While the categories in the new notices are fewer in number than the categories in the *Bunnell* Litigation notices, that is merely a matter of form: the notices here are more broadly crafted include *all* of the offending categories, including for instance multiple categories devoted to topics the Court repeatedly has ruled to be irrelevant (*e.g.*, Google, BitTorrent technology generally, every online license ever granted by any plaintiff, and so-called "spoof" files), and to topics that Judge Wilson has directed are outside the scope of the upcoming summary judgment motions (*e.g.*, damages and direct infringement of works other than the illustrative works identified in Exhibit A to the Complaint). Indeed, the current notices are even broader and more irrelevant to any legitimate issues in this case. To be sure, the Court's relevance rulings were made in context of the *Bunnell* Litigation; however, although this action and the *Bunnell* Litigation are not formally related, the two litigations are indistinguishable on the issue of the appropriate scope of Rule 30(b)(6) depositions, and the two cases have proceeded in parallel on discovery matters. In any event, at a minimum, the parties and counsel are obligated to consider those precedents in arriving at discovery positions that are substantially justified.

In light of the explicit precedents and guidance from the Court on the identical issues, Fabrizio Decl., Exs. 3 (7/19/07 Order re MPAA) & 4 (7/27/07

1 Order re plaintiff studios), plaintiffs and the MPAA sought to resolve the issues  
2 presented here without further imposition on the Court's resources. However,  
3 defendants' counsel advised plaintiffs and the MPAA that defendants affirmatively  
4 would *not* take action in this case in light of those *Bunnell* Litigation orders, because  
5 defendants disagree with them and want "to create a legally recognizable record for  
6 an appellate court to review." Fabrizio Decl., Ex. 5 (7/30/07 12:18 p.m. Rothken to  
7 Fabrizio e-mail). In an effort to accommodate defendants, plaintiffs and the MPAA  
8 proposed "to enter into a stipulation (to be so ordered by the Court) such that we  
9 deem the Court's orders applicable – to fully preserve your appeal issues, such as  
10 they are." Fabrizio Decl., Ex. 5 (7/30/07 12:45 p.m. Fabrizio to Rothken e-mail).  
11 Defendants refused, insisting that the issue be re-litigated in this case.

12 Accordingly, this application identifies those categories from the Rule  
13 30(b)(6) notices to plaintiffs and the MPAA that are objectionable. Because the  
14 categories in the notices to plaintiffs and the MPAA are word-for-word identical, for  
15 the convenience of the Court, plaintiffs and MPAA address both notices at the same  
16 time, collectively. To the extent not addressed below, plaintiffs and the MPAA do  
17 not object to categories in the notices. Further, because several of the categories are  
18 overlapping and duplicative of other categories, where doing so might assist the  
19 Court's analysis, categories raising the same issues are discussed together.

20 **A. Noticed Deposition Topics**

21 **1. Topics 1, 3, and 6**

22 **Topic No. 1:** Any and all information related to efforts by  
23 MPAA and/or Plaintiffs [t]o investigate, assess, learn  
24 about and/or evaluate copyright piracy concerning torrent  
25 files in general, and all efforts by MPAA and/or Plaintiff  
26 specifically to detect, assess, monitor or prevent copyright  
27 piracy by users of the Defendants' Websites.

28 **Topic No. 3:** Any and all information related to efforts by  
MPAA and/or Plaintiffs to investigate, assess, learn about

1 and/or evaluate whether or not Torrentspy is aware of the  
2 illegal nature of its website or can supervise or control  
3 infringers or infringement, profits from it, or materially  
4 contributes to infringement.

4 **Topic No. 6:** Any and all information related to MPAA  
5 and/or Plaintiffs' Investigation of Defendants' Websites  
6 and defendants.

6 These proposed topics, which facially relate entirely to the plaintiffs' and  
7 MPAA's *investigation* of the defendants, are not remotely relevant to the allegations  
8 of copyright infringement or affirmative defenses at issue here. Information about  
9 what the plaintiffs or MPAA did to *investigate* wrongdoing has no bearing on  
10 whether the defendants *committed* wrongdoing – especially here, where defendants  
11 have no affirmative defense even alleging investigative malfeasance. How plaintiffs  
12 and the MPAA went about uncovering defendants' copyright infringement simply is  
13 not reasonably calculated to uncover evidence that would “make the existence of  
14 any fact that is of consequence to the determination of the action more probable or  
15 less probable.” Fed. R. Evid. 401.

16 Plaintiffs recognize the Court's ruling in the *Bunnell* Litigation that work-  
17 product issues should be dealt with on a question-by-question basis, Fabrizio Decl.,  
18 Ex. 4 (7/27/07 Order ¶ 2); *but see Linder v. Nat'l Security Agency*, 94 F.3d 693, 698  
19 (D.C. Cir. 1996) (quashing subpoena given “likelihood that virtually all of [the  
20 requested documents] were privileged”). However, the objection to these topics is  
21 not only that they would exclusively call for information protected by the attorney  
22 work product doctrine or attorney-client privilege. More fundamentally, there is  
23 ***absolutely no relevance*** to plaintiffs' or the MPAA's investigative process. This  
24 case is about defendants' conduct, not plaintiffs'. That is especially so in this  
25 action: unlike in the *Bunnell* Litigation, where defendants asserted various unclean  
26 hands, copyright misuse, and equitable affirmative defenses, defendants in this case  
27  
28

1 have affirmatively and expressly *withdrawn* all such defenses by stipulation after  
2 having been served with a Rule 11 motion related to them. Fabrizio Decl., Ex. 7  
3 (stipulation withdrawing affirmative defense nos. 17 (equitable bar), 26 (unclean  
4 hands), and 38 (copyright misuse)) & Ex. 8 (defendants' Answer). Thus, whatever  
5 minimal relevance the investigative process may have had in the *Bunnell* Litigation,  
6 it has none in this case. A protective order should be issued as to Topics 1, 3 and 6  
7 on the basis that they are irrelevant to any claim or defense at issue.

8 **2. Topics 2, 8 and 9**

9 **Topic No. 2:** Any and all information which will support  
10 or relate to Plaintiffs' claim of contributory or vicarious or  
11 "inducement" copyright infringement against defendants  
or the Defendants' Websites.

12 **Topic No. 8:** Any and all information related to  
13 Secondary copyright infringement caused or contributed to  
14 by defendants and Defendants' Websites and related facts,  
analysis, and basis.

15 **Topic No. 9:** Any and all information related to any act,  
16 statement, process, writing, or conduct, involving alleged  
17 inducement by any defendant of any copyright  
18 infringement of any copyrighted work, including but not  
19 limited to, the analysis of the availability of defendants'  
20 intent and the number or statistical analysis of the number  
of allegedly infringing works obtainable via the  
Defendants' Websites.

21 With these topics, defendants purport to seek to examine corporate witnesses,  
22 many of whom are not lawyers, as to the basis for every single claim and contention  
23 plaintiffs make in this case, and on every single fact or analysis that supports such  
24 claims or contentions. That would be a physical impossibility for any individual at a  
25 deposition, even lead litigation counsel. These requests amount to wildly overbroad  
26 and unduly burdensome *contention interrogatories* – demanded in the context of a  
27 deposition. Moreover, in asking for all information supporting the plaintiffs'  
28

1 infringement claims, defendants seek not mere facts possessed in the organization's  
2 knowledge, but entire theories of the case, encompassing expert testimony and  
3 attorney work product. Indeed, most of the facts are not in possession of any of the  
4 noticed entities, but rather are known by their outside litigation counsel, for the very  
5 reason that the facts and evidence supporting plaintiffs' claims have been developed  
6 through discovery of defendants and independent investigation of outside counsel  
7 during the course of litigation. It is wholly improper to attempt to use *depositions* of  
8 corporate representatives to propound contention interrogatories. *E.g., U.S. v. Dist.*  
9 *Council of New York City & Vicinity of United Broth. of Carpenters & Joiners of*  
10 *America*, No. 90-Civ.-5722, 1992 WL 208284, at \*15-\*16 (S.D.N.Y. Aug. 18, 1992)  
11 (requiring party "to marshal all of its factual proof and then provide it to [the  
12 deponent] so that she could respond to what are essentially a form of contention  
13 interrogatories ... would be highly inefficient and burdensome, rather than the most  
14 direct manner of securing relevant information"); *McCormick-Morgan, Inc. v.*  
15 *Teledyne Indus., Inc.*, 134 F.R.D. 275, 286-87 (N.D. Cal. 1991) (ruling that  
16 contention interrogatory, not party deposition, is appropriate means of determining  
17 bases for claims, especially when subject matter is complicated), *rev'd on other*  
18 *grounds*, 765 F. Supp. 611 (N.D. Cal. 1991); *Cable & Computer Tech., Inc. v.*  
19 *Lockheed Saunders, Inc.*, 175 F.R.D. 646, 652 (C.D. Cal. 1997).

20 Furthermore, there is absolutely no point in subjecting corporate witnesses to  
21 this level of harassing examination in this case. Plaintiffs' claims and contentions in  
22 this case have been clear all along, and plaintiffs have produced all non-privileged  
23 documents related to those claims. The overwhelming part of the evidence  
24 supporting plaintiffs' claims and plaintiffs' ongoing expert analyses comes from the  
25 documents and other discovery produced by defendants – documents and discovery  
26 that neither the plaintiffs nor MPAA will have seen at any level of detail. Those  
27 materials have been (and continue to be) analyzed by outside litigation counsel and  
28

1 retained consulting and testifying expert witnesses. Moreover, the purpose of  
2 contention interrogatories is to avoid unfair surprise *at trial*. *E.g., Wechsler v. Hunt*  
3 *Health Sys., Ltd.*, No. 94-Civ.-8294, 1999 WL 672902, at \*1 (S.D.N.Y. Aug. 27,  
4 1999) (contention interrogatories are designed to “narrow[] and clarify[] the  
5 disputed issues and reduce[] the possibility of surprise at trial”). There is no risk of  
6 that here, given the case management plan ordered by Judge Wilson. Both sides  
7 will be filing summary judgment motions in a matter of three weeks. Defendants  
8 will have a full explication of the entirety of plaintiffs’ case and all of their evidence  
9 supporting it – including expert evidence – long before any trial in this matter, if  
10 there is one.<sup>1</sup>

11 A protective order should issue as to Topics 2, 8 and 9 on the basis that they  
12 are overbroad and unduly burdensome, and because they seek to propound  
13 exhaustive contention interrogatories through the impermissible means of  
14 depositions.

### 15 3. Topics 4 and 5

16 **Topic 4:** Any and all information related to relations,  
17 agreements, and communications with BitTorrent  
18 Incorporated or BitTorrent.com or the use of BitTorrent  
19 technology by plaintiffs and others.

20 **Topic 5:** Any and all information related to any plan of  
21 MPAA and/or Plaintiffs to take advantage of any  
22 opportunity afforded by using BitTorrent technology.

23 These two topics mingle issues that this Court has considered at least four  
24 times in the *Bunnell* Litigation – each time ruling that discovery as to BitTorrent

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25 <sup>1</sup> In Topic 9, defendants also include specific reference to analysis of “the number or  
26 statistical analysis of the number of allegedly infringing works obtainable via the  
27 Defendants’ Websites.” That issue is addressed below in connection with Topics 7  
28 and 22.

1 technology generally is completely irrelevant to the claims and defenses in this case.  
2 Plaintiffs have never asserted (and in fact have specifically disavowed any  
3 suggestion) that BitTorrent technology itself is somehow unlawful. This case is  
4 about conduct, *defendants' conduct*; not technology. Both this Court and the  
5 District Court (Judge Cooper) have specifically ruled that information about the  
6 technology *generally* does *not* have “any tendency to make the existence of any fact  
7 that is of consequence to the determination of the action more probable or less  
8 probable than it would be without the evidence” and is not “reasonably calculated to  
9 lead to the discovery of admissible evidence.” Fabrizio Decl., Exs. 9 (2/13/07 Order  
10 at 4), 10 (4/16/07 Den. of Review at 4), 11 (5/15/07 Order at 6), 12 (6/21/07 Den. of  
11 Review at 5 & n.3). On that issue of relevance, this case and the *Bunnell* Litigation  
12 are indistinguishable, and the reasoning and force of those rulings applies equally  
13 here.

14 The Court also has considered (multiple times) the issue of the relevance of  
15 plaintiffs' dealings, if any, with the company BitTorrent, Inc. In granting a  
16 protective order in the *Bunnell* Litigation, the Court identified one category of  
17 information that would be potentially relevant: namely, “whether plaintiffs have  
18 authorized BitTorrent, Inc. to distribute or to make available on a general and  
19 unrestricted basis, all or part of plaintiffs' copyrighted works alleged in the  
20 Complaint or listed in the attachment to the Complaint (and any others for which  
21 plaintiffs are claiming defendants infringed” through the commencement of the  
22 litigation. Fabrizio Decl., Ex. 9 (2/13/07 Order at 4); Ex. 11 (5/15/07 Order at 6).

23 Plaintiffs have agreed that the Court's defined topic is appropriate and have  
24 offered to proceed on that basis. Indeed, plaintiffs have offered to remove the date  
25 limitation of the commencement of the litigation such that defendants could inquire,  
26 without outer date restriction, as to the category defined by the Court. Beyond that,  
27  
28



1 as this Court has recognized, the general issue of dealings with any company,  
2 including BitTorrent, Inc., is simply not related to any claim or defense in this case.

3 Accordingly, a protective order should issue as to Topics 4 and 5 on the basis  
4 that they are irrelevant except insofar as defendants may inquire “whether plaintiffs  
5 have authorized BitTorrent, Inc. to distribute or to make available on a general and  
6 unrestricted basis, all or part of plaintiffs’ copyrighted works alleged in the  
7 Complaint or listed in the attachment to the Complaint (and any others for which  
8 plaintiffs are claiming defendants infringed).”

9 **4. Topics 7 and 22**

10 **Topic 7:** Any and all information related to Non-  
11 copyright infringing uses of torrent files or the bit-torrent  
12 network or bit-torrent technology or the Defendants’  
Websites.

13 **Topic No. 22:** Any and all information related to analysis  
14 of the number of allegedly infringing works and non-  
15 infringing works arising out of torrent files available or  
16 downloaded using Defendants’ Websites or available on  
the BitTorrent Network.

17 Plaintiffs and MPAA have no objection to defendants inquiring about non-  
18 infringing uses of the *defendants’ websites*. However, again, as the Court already  
19 has ruled, information relating to the BitTorrent network or technology generally is  
20 simply not relevant to whether the defendants are liable for secondary copyright  
21 infringement, and poses an undue burden in preparing witnesses to testify. Fabrizio  
22 Decl., Exs. 9 (2/13/07 Order at 4), 10 (4/16/07 Den. of Review at 4), 11 (5/15/07  
23 Order at 6), 12 (6/21/07 Den. of Review at 5 & n.3). Plaintiffs, accordingly, ask that  
24 these topics be narrowed to “non-infringing uses of the defendants’ websites.”

25 Plaintiffs also must emphasize that the information defendants seek is  
26 primarily the subject of expert analyses and testimony. Plaintiffs are in the process  
27 of finalizing expert statistical analyses of the proportion of infringing works  
28



1 available on defendants' sites and actually downloaded from defendants' sites by  
2 defendants' users. Defendants will soon get discovery of all of plaintiffs' statistical  
3 analyses – but through plaintiffs' expert statisticians, not lay corporate witnesses  
4 who have no knowledge of statistics or the ongoing statistical analyses. Plaintiffs  
5 intend to produce expert statistical analyses as soon as they are completed, and  
6 expect to do so next week or early the following week – a timeline defendants can  
7 hardly complain about, given that it was defendants' belated production of data that  
8 has delayed completion of plaintiffs' analyses. Plaintiffs will make their experts  
9 available for deposition regarding those analyses prior to the August 20th summary  
10 judgment deadline, as directed by Judge Wilson. Defendants should not be  
11 permitted to depose lay corporate representatives about ongoing statistical analyses  
12 (which are, in their incomplete state, attorney work product), particularly when  
13 those corporate representatives have no expertise or basis to provide such testimony  
14 and given that plaintiffs have represented that the appropriate expert witnesses will  
15 be made available to defendants when those analyses are completed.

16 According, a protective order should issue as to Topics 7 and 22, with the  
17 exception that defendants are permitted to ask the corporate representative about  
18 non-infringing uses of defendants' sites, if any, excluding plaintiffs' ongoing expert  
19 statistical analyses.

20 **5. Topics 10, 12, 13, 28 and 29**

21 **Topic 10:** Any and all information related to primary  
22 infringement that occurred in relation to use of or arising  
23 out of Defendants' Websites.

24 **Topic 12:** Any and all information related to copyrighted  
25 works that were downloaded in an unauthorized manner  
26 using any torrent file found via Defendants' Websites.

27 **Topic 13:** Any and all information related to Internet  
28 Files referenced by torrent files obtained using the

1 Defendants' Websites that MPAA and/or Plaintiffs or their  
2 representatives actually listened to or viewed or analyzed.

3 **Topic 28:** Any and all information related to  
4 communications, documents, information, and data related  
5 to the number of downloads of plaintiffs' copyrighted  
6 works arising out of torrent files downloaded using  
7 Defendants' Websites.

8 **Topic 29:** Any and all information related to plaintiffs[']  
9 copyright registrations for the copyrights mentioned in the  
10 complaint or at issue in this case.

11 These five topics all get at one thing: plaintiffs' knowledge and evidence of  
12 direct infringement of their copyrighted works through defendants' sites. That issue  
13 has obvious relevance to the case as a whole. And, plaintiffs do not dispute that, at  
14 the appropriate time, defendants will have the opportunity to take appropriate  
15 discovery as to all works directly infringed by defendants' users for which plaintiffs  
16 are seeking to hold defendants liable as secondary copyright infringers. However,  
17 as was the case in the *Bunnell* Litigation, Judge Wilson has expressly phased the  
18 management of this case, such that summary judgment motions will be heard on the  
19 core liability issues, and based on the illustrative works identified in Exhibit A to the  
20 Complaint. Judge Wilson directed this during the initial case management  
21 conference in Chambers. While there is no transcript of those proceedings, this  
22 should not be a matter of dispute. It also is exactly how Judge Wilson organized the  
23 *Grokster* litigation currently pending before him – during this first phase of  
24 proceedings, plaintiffs were to establish the defendants' core liability by looking  
25 *only* at those files listed as representative in Exhibit A. If the plaintiffs establish  
26 liability based on Exhibit A, a subsequent phase would open up questions of the  
27 multiplicity of other acts of direct infringement of plaintiffs' works and extent of the  
28 damages at issue. *See, e.g., EEOC v. Nebco Evans Distrib.*, No. 8:CV96-00644,

1 1997 WL 416423, at \*2 (D. Neb. June 9, 1997) (deferring remedial discovery until  
2 liability was determined).

3 The very point of organizing the case in this manner is to avoid early  
4 discovery as to thousands of individual copyrighted works that undoubtedly have  
5 been directly infringed at the hand of defendants. Thus, discovery into the  
6 particulars of copyrighted works beyond those identified in Exhibit A to the  
7 Complaint has always been outside the scope of discovery in the initial phase of  
8 litigation directed by Judge Wilson. Document and written discovery to date in this  
9 case has respected that direction and abided by it. Inexplicably, defendants now  
10 seek unfettered deposition discovery into all works, thousands or even tens of  
11 thousands of them, owned by plaintiffs.

12 For purposes of the upcoming summary judgment motions, plaintiffs do not  
13 intend to establish defendants' secondary copyright liability for direct infringement  
14 of works other than those identified in Exhibit A to the Complaint. Accordingly,  
15 consistent with the Court's ruling in the *Bunnell* Litigation, at this time, defendants  
16 should be permitted to inquire about the specific copyrighted works identified in  
17 Exhibit A to the Complaint, and no other works. Fabrizio Decl., Ex. 4 (7/27/07  
18 Order at 2).

19 **6. Topics 11, 24, 25 and 31**

20 **Topic 11:** Any and all information related to research  
21 done regarding the impact of any and all "unauthorized"  
22 torrent files on Plaintiffs' commercial sales of copyrighted  
23 works.

24 **Topic 24:** Any and all information related to research  
25 done regarding the impact of any and all "unauthorized"  
26 torrent files located on Defendants' Websites and other  
27 sites that point to infringing works on Plaintiffs'  
28 commercial sales of copyrighted works including the  
copyrighted works alleged in the complaint or at issue in  
this case.

1           **Topic 25:** Any and all information regarding the impact  
2           of the Defendants' Websites or dissemination of torrent  
3           files and related files on the Internet on Plaintiffs'  
4           profitability.

5           **Topic 31:** Any and all information related to  
6           quantification of monetary damages or related to  
7           plaintiffs' requests in the complaint for injunctive relief.

8           As with the previous set of topics, these topics all relate to an issue that Judge  
9           Wilson expressly put off limits during this first phase of the case. Once plaintiffs  
10          have established core liability, the parties will *then* move to damages and, as the  
11          Court deems appropriate, the scope of and a schedule for damages discovery will be  
12          ordered. But until they do, these topics – which deal with the “impact” or  
13          “monetary damages or ... injunctive relief” based on defendants' actions – are  
14          premature. In fact, it was precisely *because* such discovery would distract from, and  
15          delay adjudication of, the core liability issues that Judge Wilson directed the parties  
16          to defer it for a second phase. Thus, as the Court recognized in ruling on this same  
17          issue in the *Bunnell* Litigation, “inquiring about damages/injunctive relief ... at this  
18          stage of the proceedings” is inappropriate. Ex. 4 (7/27/07 Order at 3).

19           **7.      Topic 14**

20           **Topic 14:** Any and all information related to agreements,  
21           facts, and practices involving the distribution of  
22           copyrighted works of any plaintiff through any peer to  
23           peer technology over the Internet including but not limited  
24           to BitTorrent technology.

25           This topic is similar to Topics 4 and 5, except generalized beyond BitTorrent,  
26           Inc. to any potential online licensee of any plaintiff. The Court has addressed this  
27           very topic (multiple times) in the *Bunnell* Litigation, ruling that plaintiffs' licenses  
28           to others are wholly irrelevant to any claim or defense in this case, except insofar as  
29           “plaintiffs have authorized general or unrestricted distribution or availability over

1 the internet of all or part of plaintiffs' copyrighted works alleged in the Complaint or  
2 listed in the attachment to the Complaint (and any others for which plaintiffs are  
3 claiming defendants infringed)." Fabrizio Decl., Exs. 9 (2/13/07 Order at 3) & 11  
4 (5/15/07 Order at 6). Defendants already know that they do not have licenses to  
5 distribute plaintiffs' copyrighted works. Unless plaintiffs have granted  
6 authorizations for "general or unrestricted" distribution of their works such that,  
7 arguably, the rampant re-distribution of those works by defendants' users could be  
8 deemed authorized, plaintiffs' licensing arrangements with others – *e.g.*, whether or  
9 not a plaintiff has licensed Apple's iTunes or other legitimate distributors – have no  
10 relation to any claim or defense in this action.

11 Accordingly, Topic 14 should be narrowed to only permit inquiry as to  
12 whether "plaintiffs have authorized general or unrestricted distribution or  
13 availability over the internet of all or part of plaintiffs' copyrighted works alleged in  
14 the Complaint or listed in the attachment to the Complaint (and any others for which  
15 plaintiffs are claiming defendants infringed)."

16 **8. Topics 15, 18 and 30**

17 **Topic 15:** Any and all information related to Torrent files  
18 made available or distributed via the internet by any of the  
19 Plaintiffs or the MPAA or those acting on their behalf.

20 **Topic 18:** Any and all information related to Web sites or  
21 servers or services that are run or controlled by any of the  
22 plaintiffs or the MPAA or those acting on their behalf that  
23 in any manner host, store, link to, track, seed, download,  
24 upload, analyze, or make available torrent files or files  
pointed to by torrent files including but not limited to all  
or part of plaintiffs' copyrighted works.

25 **Topic 30:** Any and all information related to torrent files  
26 uploaded or downloaded by the MPAA or plaintiffs or  
those working on their behalf to the Defendants' Websites.

1        These topics seek to discover information about “spoof” files that defendants  
2 believe plaintiffs and/or the MPAA distribute as part of their antipiracy efforts. To  
3 be clear, plaintiffs are *not* claiming that defendants or their users have infringed so-  
4 called “spoof” files. Spoof files, by their very definition, do not contain the content  
5 that users expect the files to have. They are files that give the appearance of being  
6 infringing copies of the most popular copyrighted motion pictures and television  
7 shows – but they are not. They often contain nothing (white noise) or antipiracy  
8 messages, and often are designed so that they will never complete their download.  
9 The antipiracy value of these fake files is to disappoint and deter would-be  
10 infringing users: *i.e.*, those who explicitly are trying to download infringing copies  
11 of plaintiffs’ copyrighted works. As this Court and Judge Cooper have already  
12 ruled, they have nothing to do with whether the defendants’ are liable for secondary  
13 infringement. Fabrizio Decl., Exs. 10 (4/16/07 Den. of Review at 4-5) (“Defendants  
14 have failed to demonstrate that Judge Chooljian erred in her decision to exclude  
15 ‘spoof’ files from discovery”) & 12 (6/21/07 Den. of Review at 6). There is  
16 absolutely no distinction between the relevance issue in this case and the *Bunnell*  
17 Litigation.

18        Indeed, defendants most likely want these materials because they reveal  
19 highly sensitive information about antipiracy strategies – which defendants could  
20 use to undermine those strategies. *See DirecTV, Inc. v. Trone*, 209 F.R.D. 455, 458-  
21 59 (C.D. Cal. 2002) (denying discovery of antipiracy efforts).

22        Accordingly, a protective order should issue as to Topics 15, 18 and 30 on the  
23 basis that they are irrelevant to any claim or defense at issue.

## 24                    **9.        Topics 17 and 32**

25                    **Topic 17:** Any and all information regarding the reasons  
26 the MPAA or the Plaintiffs have avoided using the  
27 Defendants’ Websites’ DMCA procedure to remove  
28

1 torrent files that MPAA and/or Plaintiffs believe were/are  
2 infringing or leading to infringing files.

3 **Topic 32:** Any and all information related to the  
4 Defendants' Websites and DMCA mechanisms as it exists  
5 in its current state that the MPAA or plaintiffs find  
6 objectionable or that would in any way relate to plaintiffs'  
7 liability claims and allegations in the complaint that would  
8 not render such plaintiffs' liability claims and allegations  
9 moot or no longer existing.

10 As an initial matter, Topic 32 is so ambiguous as to be largely unintelligible.  
11 But to the extent that it and Topic 17 seek information about the reasons why some  
12 plaintiffs may *not* have used defendants' DMCA procedures, the topics are wholly  
13 irrelevant to the plaintiffs' Complaint *and* to the defendants' DMCA defense.  
14 Defendants know the relevant facts: whether a plaintiff has sent defendants DMCA  
15 notices and how defendants have responded to the notices. The question of "why"  
16 any plaintiff may have sent a DMCA notice or may have decided not to send a  
17 notice has no bearing on any issue. Defendants' DMCA procedures and practices  
18 become relevant only to the extent a copyright holder uses them; at that point  
19 defendants' response, or lack of response, may be relevant. But the DMCA does  
20 *not* require any copyright holder to send notices. The DMCA provides for at least  
21 four independent requirements that a qualifying service provider must satisfy in  
22 order to potentially be eligible for "safe harbor" under the DMCA. 17 U.S.C.  
23 § 512(d). One of them is responding in a statutorily compliant manner with  
24 takedown notices when a copyright owner chooses to send them. However, it does  
25 not require a copyright holder to send a notice, and even a defendant who fully  
26 complies with a notice would not be eligible for "safe harbor" if that defendant did  
27 not fully satisfy all of the other statutory prerequisites. "Why" a plaintiff may or  
28 may not have sent defendants a DMCA notice is both irrelevant and, in almost all



1 cases, would be privileged from disclosure based on the attorney-client privilege or  
2 attorney work product doctrine.

3 Accordingly, a protective order should issue as to Topics 17 and 32 on the  
4 basis that they are irrelevant.

5 **10. Topic 20**

6 **Topic 20:** Any and all information related to analysis of  
7 third party search engines and sites that make available  
8 Dot-torrent files and the existence, contribution, and cause  
of copyright infringement.

9 Topic 20, without naming names, seeks information about Google (and, as  
10 drafted, any other search engine on the Internet). It is entirely irrelevant to the  
11 issues in this case, which concerns defendants' conduct, not the conduct of any  
12 third-party search engine. This Court has ruled, and been affirmed, multiple times  
13 that evidence relating to the search engine Google.com has no relevance in this  
14 litigation. As Judge Cooper put it in affirming this Court's decision the first time,  
15 "whether the online services Defendants provide are similar to other Internet  
16 entities, such as Google, is not relevant to whether Defendants are liable for  
17 copyright infringement as Plaintiffs allege in this case." Fabrizio Decl., Ex. 10  
18 (4/16/07 Den. of Review at 5-6); *see also* Exs. 9 (2/13/07 Order at 4-5), 4 (7/27/07  
19 Order at 3) (denying Req. No. 61), 6 (*Bunnell* Plaintiffs Notice Req. No. 61) (search  
20 engines). Plaintiffs here do not have to prove whether Google violates their  
21 copyrights; they need only prove that defendants do. *See, e.g., Central Valley*  
22 *Chrysler Valley Jeep, Inc. v. Witherspoon*, No. CV-F-04-6663, 2006 WL 1883363,  
23 at \*3, \*8 (E.D. Cal. July 7, 2006). There is no conceivable basis for defendants to  
24 argue that there are distinctions between this case and the *Bunnell* Litigation that  
25 somehow make the conduct of Google, and every other search engine, remotely  
26 relevant to *defendants' conduct*, or the claims or defenses at issue in this case.  
27  
28



1 Accordingly, a protective order should issue as to Topic 20 on the basis that it  
2 is irrelevant.

3 **11. Topic 21**

4 **Topic 21:** Any and all information related to relations,  
5 agreements, interviews, and communications with any  
6 witnesses who have used the Defendants' Websites or  
7 have in any manner interacted with it or had any relations  
8 involving it business or otherwise.

9 This topic is both overbroad and irrelevant, and vague and ambiguous to the  
10 point of impossibility. Defendants seek to depose the plaintiffs about any  
11 communications that the company has ever had with anyone who has ever "used ...  
12 [or] in any manner interacted with" defendants' websites, or has "had any relations  
13 involving" their websites – and, indeed, whether or not the communication even  
14 related to the websites. Most basically, plaintiffs have no way of knowing who, of  
15 the thousands of people who interact with their companies, has ever "interacted  
16 with" the defendants' websites.

17 Moreover, there is no possible relevance to such a topic. Were defendants  
18 interested in simply identifying any undisclosed witnesses for the plaintiffs, they  
19 could ask such information through other means. But they do not even have to do  
20 that. Judge Wilson has instructed the parties that they should make their summary  
21 judgment declarants available to the other side for deposition. There is no  
22 suggestion that plaintiffs have been other than open on these issues. The plaintiffs'  
23 Rule 30(b)(6) witnesses are very likely their only fact witnesses, and expert  
24 witnesses are being disclosed, and will be made available for deposition. Whether  
25 the plaintiffs or their counsel, the MPAA, have communicated with *others* who have  
26 "interacted" with the defendants' websites is both impossible to know and, to the  
27 extent it is known, is irrelevant and almost wholly work product.  
28

12. Topic 23

**Topic 23:** Any and all information related to efforts by MPAA and/or Plaintiffs to investigate, assess, learn about and/or evaluate that the Internet and bit-torrent technology provide budding artists without recording company contracts with an inexpensive vehicle for communicating their work to the public.

If there were any doubt about whether the defendants are wasting the Court's and plaintiffs' resources by forcing the present application, this topic should remove it. Plainly, defendants have simply "cut and paste" from prior lists of Rule 30(b)(6) topics, without giving the care or thought that is required. Had defendants even read this Topic 23 before serving it, even they would have to admit that the issue of "budding artists without recording company contracts" has no relevance here: The plaintiffs and MPAA do not deal with "budding artists without recording company contracts." This action concerns defendants' infringement of the motion picture studio plaintiffs' copyrighted motion pictures and television shows – not music or sound recordings. Furthermore, the topic, again, impermissibly seeks information about all of BitTorrent technology in general (*see, e.g., supra* Topics 4 and 5).

Accordingly, a protective order should issue as to Topic 23 on the basis that it is irrelevant.

13. Topic 26

**Topic 26:** Any and all information related to correspondence or other communication between Plaintiffs and others, including but not limited to MPAA, concerning Defendants or Defendants' Websites.

This request is objectionable as being vague and overbroad. It requires each plaintiff to designate a single individual to become educated about all correspondence, anywhere, regardless of whether defendants asked that the correspondence be produced, if it "concern[s]" defendants or their website.

1 Plaintiffs have already produced all non-privileged documents and correspondence  
2 responsive to any of defendants' document requests. Plaintiffs have no objection to  
3 their corporate representatives being examined on any of the documents produced.  
4 But, to the extent the topic seeks to go beyond that, it would be physically  
5 impossible to have any individual prepared to speak to every document in some  
6 corporate file. Indeed, as framed, the topic seems to be an effort to propound a de  
7 facto document request for all correspondence that "concerns" defendants or their  
8 website, under the guise of a Rule 30(b)(6) notice.

9 Accordingly, a protective order should issue as to Topic 26 limiting it to  
10 documents produced by the plaintiff in response to one of defendants' document  
11 demands.

12 **14. Topic 27**

13 **Topic 27:** Any and all information related to efforts made  
14 by MPAA and/or Plaintiffs to remove or take off the  
15 Internet or BitTorrent Network actual files allegedly  
16 referenced in torrent files available via the Defendants'  
Websites.

17 Topic 27 is irrelevant. Like so many others, this topic is based on the simple  
18 (but repeated) fallacy that plaintiffs' or MPAA's actions regarding *other* infringing  
19 parties has relevance to whether *defendants* are liable for copyright infringement.  
20 Whether or not the plaintiffs or MPAA have taken any such actions does not tend to  
21 make any fact in this action more or less likely. Here, defendants seem to be  
22 seeking information as to whether plaintiffs or the MPAA have taken steps to  
23 remove the actual infringing content pointed to by defendants' dot-torrent files.  
24 Since, as defendants know, that infringing content typically resides on the personal  
25 computers of defendants' (and other BitTorrent) users, the topic in fact seeks to  
26 inquire as to whether plaintiffs have taken action against those users. That is  
27 irrelevant. The secondary copyright liability issues in this case require plaintiffs to  
28

1 prove that direct infringement occurred, not that plaintiffs have exhausted their  
2 efforts to enforce against each of the millions of direct infringers. Whether plaintiffs  
3 have or have not taken any such actions is not probative of any claim or defense.  
4 Defendants cannot even make the far-fetched claim that this information might  
5 relate to an equity-based affirmative defense, because (facing a Rule 11 motion)  
6 defendants withdrew all such affirmative defenses. (*see supra* Topics 1, 3 and 6).

7 **B. The Notice's Definition Nos. 1 and 3**

8 **Definition No. 1:** The term "Plaintiff" refers to the respective  
9 plaintiff responding to these requests and where applicable in  
10 this context, plaintiffs collectively, and plaintiff's corporate  
11 affiliates, predecessors, predecessors of corporate affiliates,  
12 representatives, agents, servants, counsel, employees,  
consultants, and person authorized to act, acting, or purporting to  
act on its behalf.

13 **Definition No. 3:** The term "MPAA" refers to the Motion  
14 Picture Association of America and where applicable in this  
15 context, its corporate affiliates, predecessors, predecessors of  
16 corporate affiliates, representatives, agents, servants, counsel,  
17 employees, consultants, and person authorized to act, acting, or  
purporting to act on its behalf.

18 These definitions are overbroad and outside the scope permitted in a Rule  
19 30(b)(6) deposition. Rule 30(b)(6) permits deposition of "a public or private  
20 corporation," and imposes obligations only on "the organization so named" to  
21 provide a deponent to testify "as to matters known or reasonably available to the  
22 organization." Fed. R. Civ. P. 30(b)(6). An organizational deponent can be asked to  
23 testify only regarding information "reasonably available" to the organization being  
24 deposed. *In re Ski Train Fire of Nov. 11, 2000 Kaprun Austria*, No. MDL 1428,  
25 2006 WL 1328259, at \*9 (S.D.N.Y. May 16, 2006). The rule does not permit a  
26 single notice to one corporation to obligate the witness to provide testimony on  
27 behalf of "plaintiffs collectively," all affiliates (including parents and foreign  
28

1 affiliates), predecessors, predecessors of affiliates, and consultants. That is  
2 especially so here, where some plaintiffs are multinational conglomerates with  
3 unrelated affiliates all over the world. If defendants wished to depose these entities,  
4 which are not parties here, they should have served a Rule 45 subpoena.

5 Accordingly, a protective order should issue limiting the definition of  
6 "Plaintiff" to the named party in suit, and limiting the definition of "MPAA" to the  
7 Motion Picture Association of America, Inc.

### 8 CONCLUSION

9 Defendants have not identified any credible basis to distinguish the existing  
10 precedents on these very issues decided in the *Bunnell* Litigation. Nonetheless,  
11 defendants required the filing of this application. Defendants' positions on the Rule  
12 30(b)(6) topics cannot be deemed to be "substantially justified" under any theory.  
13 Fed. R. Civ. P. 26(c), 37(a)(4) (award of fees shall be made unless the opposing  
14 party is "substantially justified"); *Green v. Baca*, 225 F.R.D. 612, 614-15 (C.D. Cal.  
15 2005).

16 For the foregoing reasons, a protective order in the form of the proposed order  
17 should be granted, and plaintiffs and the MPAA should be awarded their costs and  
18 reasonable attorneys' fees incurred in making this application.

19 Dated: August 1, 2007

Respectfully submitted,

20 JENNER & BLOCK LLP

21 By: 

22 Steven B. Fabrizio

23 STEVEN B. FABRIZIO  
24 GIANNI P. SERVODIDIO  
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**PROOF OF SERVICE**

I, Vicki S. Henderson, the undersigned, declare that:

I am employed in the County of Los Angeles, State of California, over the age of 18, and not a party to this cause. My business address is 10100 Santa Monica Boulevard, Suite 2200, Los Angeles, California 90067-4120.

On August 1, 2007, I served a true copy of the **PLAINTIFFS' AND MPAA'S NOTICE OF EX PARTE APPLICATION AND EX PARTE APPLICATION FOR PROTECTIVE ORDER RE RULE 30(B)(6) DEPOSITIONS – FEES REQUESTED** on the parties in this cause

☒ (VIA OVERNIGHT DELIVERY) by placing the above named document in a sealed envelope addressed as set forth below, or on the attached service list and by then causing said envelope to be deposited for collection and overnight delivery via Federal Express in accordance with Loeb & Loeb LLP's ordinary business practices.

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☒ (VIA EMAIL) I caused the transmission of the above named document to the email address set forth below.

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3 Service the same day it is collected and processed.

4 I certify that I am employed in the office of a member of the bar of this Court  
5 at whose direction the service was made.

6 I declare under penalty of perjury that the foregoing is true and correct.

7 Executed on August 1, 2007, at Los Angeles, California.

8  
9   
10 Vicki S. Henderson



**PROOF OF SERVICE**

I, Gera Adams the undersigned, declare that:

I am an employee or independent contractor of Nationwide Legal, Inc., a registered California process service (Registration Number 5484 ), having its principal place of business in the County of Los Angeles, State of California, and whose telephone number is (213) 625-9100. I am over the age of 18 and not a party to the within action; my business address is 316 West 2<sup>nd</sup> Street, Suite 705, Los Angeles, CA 90012.


On August 1, 2007, I served a true copy of **PLAINTIFFS' AND MPAA'S NOTICE OF EX PARTE APPLICATION AND EX PARTE APPLICATION FOR PROTECTIVE ORDER RE RULE 30(B)(6) DEPOSITIONS – FEES REQUESTED** by delivering to the office of the addressee(s) in a sealed envelope:

Kirk J. Retz, Esq.  
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21535 Hawthorne Boulevard, Suite 200  
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I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 1, 2007, at Los Angeles, California.

  
Signature